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Black and dangerous?

Rebecca Omonira listens to patients' experiences of mental health services

Haldane Society of Socialist Lawyers

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The Haldane Society was founded in 1930. It provides a forum for the discussion and analysis of law and the legal system, both nationally and internationally, from a socialist perspective. It holds frequent public meetings and conducts educational programmes.The Haldane Society is independent of any political party. Membership comprises lawyers, academics, students and legal workers as well as trade union and labour movement affiliates. The list of the current executive, elected at the AGM on 14th November 2013 is as follows:

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Taboos and stigma need to be fought

The subject of mental health in 2014 in the UK remains to a large extent a matter of taboo which gives rise to stigma and sometimes worse against those who suffer from mental health difficulties. This is despite it being an issue which affects every human being to some degree or other. Much work has still to be done on these shores to alter the general negative perceptions that exist surrounding mental health issues. There is some irony in this given that the UK has some of the most progressive professionals working in the field of mental health of anywhere in the world. In this issue we are proud to co-publish together with openDemocracy, Rebecca Omonira's revealing investigation into black patients' experiences of mental health services.

The recent soundings coming out of the three main party political conferences this autumn have done little to dispel the sense that further austerity measures are pending in the coming months and years whatever may happen at next year's general election in May 2015. It is the speeches made at the Conservative party conference which have been the most alarming and the most naked in their hostility to the vulnerable, poor and disadvantaged in society. The Tory led assault on the justice system continues. Not content with savaging legal aid and other areas of the welfare state, the Conservatives have announced through briefings to the press this autumn their desire to scrap the Human Rights Act if re-elected in May 2015. The ideological motives behind these announcements, coupled with the constitutional illiteracy of the proposals, have led to protests from Conservative party luminaries such as Kenneth Clarke QC MP. The former Attorney General, Dominic Grieve QC MP, was moved to call the proposals to dispose of the Human Rights Act 'almost puerile'. He went on to tell *The Guardian* newspaper that his view of the proposals was that: 'I also think they are unworkable and will damage the UK's international reputation.'

In his regular column on behalf of Young Legal Aid Lawyers, Connor Johnston casts an eye over some of the recent defeats suffered by the Government in the High Court concerning the ill conceived cuts to legal aid which the Lord Chancellor, Chris Grayling MP, has sought to push through. Although it is now the subject of an appeal, the judgment of the High Court on the proposed residence test in the case of *R (Public Law Project) v Secretary of State for Justice* [2014] EWHC 2365 (Admin) nonetheless represents a victory in the wider struggle against the Government's austerity programme. It is one example perhaps of why the Justice Secretary is so keen to cut legal aid and limit access to judicial review, despite the clear threats that this poses to both the rule of law and democracy.

The struggle for access to justice, the rule of law and democracy is as much an international theme as a domestic matter. In this issue there is a special feature on Colombia where human rights defenders such as Liliany Obando continue to struggle for peace, democracy and better living standards. In a continuation of our Defending Human Rights Defenders work, members of the Haldane Society recently visited Liliany Obando at her home in Bogotá where she is currently detained under house arrest on the charge of 'rebellion'. The Haldane Society is supporting the campaign for the release of Ms Obando and has written recently to the Colombian authorities concerning her case. Liliany Obando's son writes about his experience of a visit to his mother during the time of her incarceration at Buen Pastor Women's prison.

Colombia has a sophisticated written constitution. There are many dedicated lawyers working in Colombia seeking to advance human rights and the rule of law. The hope across Colombia among many of its citizens is that the peace talks currently taking place in Havana between the Farc and the Colombian State lead to the successful resolution of a conflict that has lasted for too long and which continues to claim many innocent lives, including those of trade unionists, journalists and lawyers.

We are grateful to the photographers B+ and Coleman for being able to publish their photo essay *Creating Memory is our Weapon* documenting the Zapatista march on Mexico City in 2001. As the review of the play *Wonderland* about the 1984 – 1985 miner's strike also reminds us in this issue, the power of memory and recollecting the struggles of yesteryear is vitally important. Gareth Peirce remembers one her most well known clients, Gerry Conlon and his struggle to overcome the impact of being a victim of one of the most infamous miscarriages of justice in recent British legal history.

Tim Potter (socialistlawyer@haldane.org)

Revoking citizenship: 'a form of punishment more punitive than torture'

The expansion of the use of US drones in the 'war on terror' has rightly attracted alarm and criticism. The unmanned planes are used to carry out assassinations on suspected terrorist targets, often with scant regard for due process or any resulting 'collateral damage' which frequently claims the lives of innocent victims.

It is known that UK Government agencies and secret services assist their US counterparts by gathering information and intelligence which is subsequently used to target victims of drone attacks. Indeed, since 9/11, successive UK Governments have made numerous legislative attempts to facilitate this contribution, only to be thwarted when the new laws are ruled to be incompatible with human rights. Detention powers brought in under the Terrorism Act 2006 or the current Government's lengthy frustrations in fighting successful appeals against deportation orders are two such examples.

New powers, introduced earlier this year, which permit the stripping of British citizenship from individuals who hold dual nationality or naturalised British citizens, may have overcome these hurdles – as without their British citizenship, an individual's recourse to human rights and rights of appeal are severely curtailed.

British citizenship is commonly revoked while individuals are in international transit, rendering their passports invalid by the time they reach their destination. The individual is then detained by border authorities and passed on to the national police or secret services for questioning.

Though the stripping of citizenship is not a new tool at the Government's disposal, it is now sufficient that the Home Secretary demonstrate only 'reasonable belief' that the individual can secure an alternative passport – potentially rendering individuals Stateless and without any legal rights – a situation described by the Supreme Court as a 'form of punishment more punitive than torture'.

Concerns were raised about the new powers at a meeting in Camden Town Hall on 5th August 2014, entitled: 'Dangerous Surveillance: Drones, Data and Deprivation of Citizenship'.

Namir Shabibi, a caseworker at Reprieve, which provides representation and assistance to prisoners of the 'war on terror', explained that through a series of agreements with compliant States where human rights cannot be invoked, the UK Government facilitates the detention and often torture of individuals abroad for the purposes of intelligence gathering and that, without citizenship, pressure can no longer be put on the Foreign Office to lobby for their release.

Pictures: Jess Hurd / reportdigital.co.uk

Demonstrators at a 'Ground the Drones' protest at Waddington Military Air Base in

Decisions to revoke citizenship are usually made in secret courts which have mushroomed in recent years. Speaking at the meeting, solicitor Alastair Lyon of Birnberg Peirce Solicitors highlighted the extreme difficulty of appealing the grounds upon which individuals are deemed a threat to national security as the assessment frequently relies on secret evidence which neither the accused nor their legal representative have sight of.

Despite their ostensible general applicability, such anti-terror legislation and powers are inevitably disproportionately invoked against members of those communities deemed at risk of harbouring terrorist suspects – resulting in a steady accumulation of resentment against a system which targets them.

Allegations have been made that border officials and the secret services are abusing powers of detention to intimidate individuals at airports into becoming informers on their communities with threats of arrest and interrogation abroad.

Speaking at the meeting, organised by the Campaign

July

4: Andy Coulson, former editor of the *News of the World*, is jailed for 18 months for conspiracy to intercept voicemails. Rebekah Brooks, his predecessor as editor of the *News of the World*, was found not guilty of all charges against her.

'Coulson was the finest communications director the Tories had in the modern age. I don't believe him guilty'.
Former Tory MP Louise Mensch.

9: A judicial review of the inquest into Mark Duggan's death begins. Mark Duggan's mother is challenging the verdict of lawful killing before the High Court. In 2011, Mark Duggan was killed by police. His death was followed by nationwide rioting.

10: A private prosecution against French military equipment firm Magforce International and Chinese firm Tianjin Myway International collapses. The Crown Prosecution Service said that the case could no longer proceed for legal reasons. The two firms were alleged to have marketed torture equipment in London at the world's largest arms fair.

Lincoln in April 2013.

Against Criminalising Communities (CAMPACC), Mohamed Ibrahim of the London Somali Youth Forum said that the frequent targeting and harassment of Somalis was counterproductive and represents a 'ticking time bomb' in terms of community relations and integration.

Given the potentially serious consequences for social cohesion and the dubious legality of much anti-terror legislation it is time that the Government stopped looking for the loopholes in human rights law in the name of international and domestic security.

Agnieszka Grabianka-Hindley

11: An alliance of civil liberty organisations, including Privacy International and Liberty, brought a legal challenge against the UK intelligence agencies on the accessing of mass data harvested by the US National Security Agency. The case is heard before the Investigatory Powers Tribunal which usually holds hearings behind closed doors.

On the picket line

Unwelcome figures

The release of the Employment Tribunal figures for April to June 2014 made unwelcome reading for employment lawyers. The total number of claims issued (18,106) was down 76 per cent on the same period a year ago. Just as important was the 24 per cent fall in claims compared to the previous quarter from January to March 2014.

Part of the context is that the coalition Government's introduction of Employment Tribunal fees has led to a one-off reduction in the total number of claims. The fall has happened because the combined cost of the hearing and issuing fees (£1,200 for unfair dismissal or discrimination claims) was set high compared to the value of claims. The median award in either jurisdiction is around £5,000 and in most cases the claimant has to fund their legal costs from their damages. It is too early to say with certainty what the long-term effect of fees has been, but it is likely to cause a permanent decline in the number of cases of, at a rough estimate, 60 per cent.

In addition, since 6th May 2014, all new claims have been required to go through a pre-issue conciliation period, during which claimants are required to register their claim with Acas, to establish whether the claims are capable of settlement. The impact of Acas has been to convert what would have been a 60 per cent or so decline in the number of claims to a total decrease of 74 per cent.

The Government's analysis is that the further fall in the number of claims is welcome. Tribunal litigation has enormous hidden costs, which are psychological as well as financial, for both workers and employers. The Government's logic is that now both parties benefit from a system which focuses their minds on settlement.

Even if this was true, there are a number of cautions worth recognising. Firstly, the Acas system is not designed to unblock negotiations which have become stalled. Rather it is a test intended to catch the 'low lying fruit', the cases which were already on the verge of settlement. When a worker contacts Acas, they are required to give few more details than their name and address and their employer's contact details. They are then telephoned by an Acas officer.

While a claimant in any area of law, on their first attendance with their solicitor, would be expected to give the full details of their case, Acas calls are much shorter. Workers are not always asked what their complaint is about, nor even, in the initial call, how much money they are seeking by way of settlement. Acas officers are cautious to be seen to 'give legal advice', or to be seen to be 'taking sides'. Calls to the employer are, in many cases, equally brief. The employer is asked if they have an intention to settle. No pressure is put on an employer if the answer is no. Unless the parties each already have an intention to settle, the Acas officer will move on to the next case.

Secondly, where no settlement is reached, Acas acts as a buffer between the claimant and issuing a claim. The intended structure of pre-action litigation is now as follows: a worker has three months from the act about which they complain to issue. They must contact Acas within this time. The case is then held by Acas for a month; and then, if no settlement is reached, a worker is issued with a certificate, without which they cannot issue a claim. The three month time limit is extended for the period in which the case was with Acas. Employment law has seen, in the past, a very large number of cases concerning what the Tribunal should do when cases are late, including in situations where the delay is as short as a few minutes or as long as several years. In a context where time limits are already closely guarded there is an enormous potential for satellite litigation, for example where Acas wrongly fails to issue a certificate, or where there is a dispute between any of the employee, the employer or Acas about whether the claim was with Acas for the requisite period or not.

With those two major cautions in mind, it is worth returning to the principal argument in favour of compulsory Acas conciliation, that it will settle a number of cases which would otherwise have gone to a contested hearing.

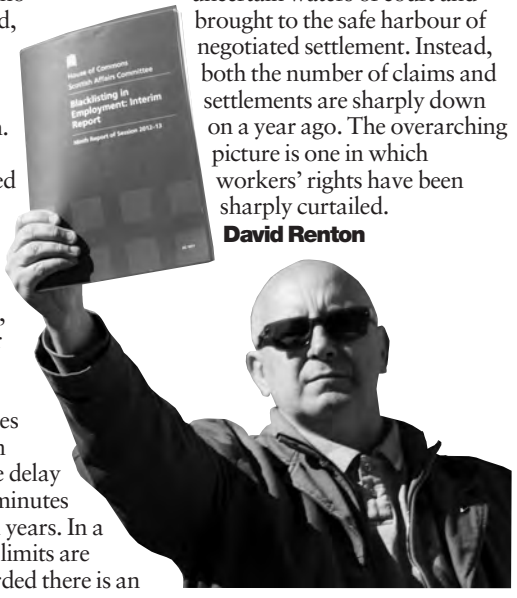
A year ago, broadly speaking, around 18,000 claims per month were issued, of which 6,000 settled and 12,000 reached some other outcome, be it success or failure at a final hearing or disposal at an interim hearing.

Today, it seems that around 17,000 workers a month contact Acas and around 3,000 cases are settled. Of the remaining 14,000 cases, 8,000 disappear altogether. In other words, workers, not receiving any satisfaction, simply drop out of the system with nothing and around 6,000 claims are issued.

The number of settlement agreements is running at half the level of a year ago: 3,000 per month now in 2014, as compared to 6,000 per month in 2013.

It follows that workers have not been rescued from the uncertain waters of court and brought to the safe harbour of negotiated settlement. Instead, both the number of claims and settlements are sharply down on a year ago. The overarching picture is one in which workers' rights have been sharply curtailed.

David Renton



The college making space for socialism in university life

There is often no time for today's law students to engage with socialist ideas during the course of their studies. Timetables are packed with modules on company law and intellectual property. Outside the classroom many students are preoccupied with thinking about training contracts, bar exams, and entering the world of work.

The School of Law at Birkbeck, University of London, is different from many law schools and faculties because of its commitment to social justice and wider relationships between law and society, politics and culture. Established in 1992, the School of Law at Birkbeck was created to produce graduates who not only have knowledge of the relevant skills, rules and principles of law, but are equally aware of the social, political, economic, philosophical and ideological aspects of the legal art.

The School of Law's activities and ambitions embody the ethos of Birkbeck, which was established in 1823 to provide educational opportunities for working people. Since those early days, when it was known as the London Mechanics' Institute, Birkbeck has been London's only specialist provider of evening higher education, providing opportunities for non-traditional students wanting to combine work and study.

Birkbeck's School of Law is proud of its long-standing history of debating socialist thought, and its close links with the Haldane Society. Michael Mansfield QC, President of the Haldane Society, was appointed as a Visiting Professor at the School earlier this year. The School's staff includes human rights barrister Professor Bill Bowring (Haldane's International Secretary). Sessional lecturers have included the barristers Anna Morris (Haldane's Vice-Chair) and Siobhán Lloyd (member of Haldane's Executive Committee).

Public events often focus on human rights, freedom and solidarity. The legal aspects of the civil rights movement in the USA and the murder of Stephen Lawrence were explored by the renowned US academic and political activist Angela Davis at the School of Law's annual law lecture, entitled 'Freedom is a constant struggle: closures and continuities', in 2013. She also spoke about the role of women domestic workers in Black resistance in the USA, Palestinian struggles, the labour movement, prison abolition and respect for the environment.

Birkbeck students discussed putting socialist principles into practice with senior members of the Haldane Society, including Imran Khan and Frances Webber (Haldane Vice-Presidents), and others during a weekend, entitled 'Radical lawyering – theory and practice', at Cumberland Lodge in 2013.

Birkbeck Law student Laura Barre (LLM in Human Rights). Picture: Birkbeck College.

Other events have included 'Law on Trial' from 16th to 20th June 2014 – a week of free public events organised by the School of Law. The theme for this year's evening events was scientific evidence. As part of the sessions, panellists interrogated the way in which the State evades accountability for its violence through its selective exclusion and validation of scientific evidence in deaths in custody and protest cases; and the use of new technologies in relation to policing, security and migration.

Human rights and welfare are also centre stage in the School's new intensive Law Master's courses, which are taught during concentrated periods of face-to-face teaching. This involves teaching during two weeks in April and two weeks in June/July. These Master's degrees build on the School's unique interdisciplinary and critical approach to legal studies.

Guy Collender

Guy is Communications Manager at Birkbeck, University of London.

● For more information visit www.bbk.ac.uk/lawontrial and www.bbk.ac.uk/law/intensives .

Picture: Jess Hurd / reportdigital.co.uk

At the Trades Union Congress in September, General Secretary Frances O'Grady calls

July

10: Metropolitan Police Commissioner, Sir Bernard Hogan-Howe, apologised to the family of Ms Cherry Groce for police failings which led to her being shot during a raid. The shooting of Ms Groce triggered the 1985 Brixton riots. She died 26 years later of kidney failure directly linked to the gunshot wound. The jury at her inquest identified serious failings by the police.

15: The High Court struck down a new residence test to restrict eligibility for legal aid as unlawful and discriminatory. The draft regulations which included the new residency test can no longer be enacted by means of secondary legislation and it is not legitimate to discriminate against non-residents on the sole ground of saving costs.

August

5: The prosecutor of the International Criminal Court, Mrs Fatou Bensouda, received Mr Riad al-Malki, the Foreign Minister of Palestine, in The Hague. Mr Riad al-Malki requested the meeting to express concerns about the recent conflict in Gaza and to request clarifications on the mechanisms for a State to accept jurisdiction of the ICC.

6: Max Schrems, a data privacy campaigner, signed up 25,000 people to a class action lawsuit against Facebook. He alleges that Facebook has breached EU laws by monitoring members' activity on and off the site and co-operated with Prism, a US surveillance scheme.

for support for the 'Britain Needs a Pay Rise' mass demo planned for 18th October.

Union links always strong

One of the Haldane Society's proudest actions to date was its solidarity and support, day and night, for the miners' strike in 1984-5. Memories of that period are evoked by the outstanding film *Pride* which is now on general release.

Since its foundation, the Haldane Society has been inseparably linked to the trade union movement. Our Vice Presidents John Hendy QC and Professor Keith Ewing are respectively Chair and President of the Institute of Employment Rights (IER).

IER was conceived in 1989, following the brutal anti-union laws introduced by three successive, Thatcher led Tory Governments. This was also a time when the trade union labour movement was experiencing a serious crisis of confidence and seemed no longer clear about the sort of labour law framework it wanted to protect and advance workers' interests in the contemporary globalising economy. The Labour party was therefore unable to respond adequately to the Thatcherite challenge.

In the face of this Tory assault and Labour uncertainties, a group of progressive labour lawyers and trade union leaders came together to set up the IER. Among the strong supporters of IER are Frances O'Grady, General Secretary of the TUC and General Secretaries Len McCluskey of Unite the Union, Billy Hayes of the CWU and Dave Prentis of Unison.

In January 2013, the European Lawyers for Democracy and Human Rights, of which the Haldane Society was a founder member, took the initiative together with IER to form the network of European Lawyers for Workers (ELW).

The aim of ELW is to support workers, workers' representatives, e.g. works councils, and trade unions in advancing their interests. The network promotes the transfer of knowledge among its members especially with regard to labour law in the European Union. The members of the network see their work as a contribution to the promotion of the rights of workers and trade unions. The members of the network, in their legal practice, are lawyers who mainly represent workers and not employers.

ELW's coordinating committee comprises Sebastian Baunack, Berlin; Jan Buelens, Antwerp; Rüdiger Helm, Munich; John Hendy QC, London; Mireille Jourdan, Brussels; Mechtild Kuby, Berlin, Germany; Virginia Mantouvalou, London; Thomas Schmidt, Düsseldorf; Michael Schubert, Freiburg; and Jean Luc Wabant, in Lille and Paris.

On Saturday 15th November 2014, ELW will hold an international conference entitled 'Six Years of Austerity and the Impact of Collective Bargaining' at the Maison de l'Europe in Paris. The conference has been organised by ELDH together with the Syndicat des Avocats de France (SAF), the Fonds Interprofessionnel de Formation des Professionnelles Libéraux, and our German sister organisation Vereinigung Demokratischer JuristInnen und Juristen (VDJ).

Participants will be welcomed by Jean Luc Wabant, a labour lawyer who works in Lille and Paris and who is a member of SAF and of the ELW coordinating committee. Professor Keith Ewing will introduce 'Collective Bargaining in Times of Austerity', followed by Isabelle Schoemann, a senior researcher at the European Trade Union Institute in Brussels delivering a talk on 'Collective Bargaining – a comparison of changes on a national level under the impact of the crisis. How can European law contribute to a fight against the regression?' Professor Filip Dorssemont of the Université Catholique de Louvain will speak about 'Austerity in the jurisdiction of the European Court of Human Rights and the European Court of Justice'. Professor Pascal Lokiec from the Université Paris Ouest-Nanterre will speak about 'How austerity is forcing French unions, works councils and workers to make concessions'.

The conference will hear from Dr Reingard Zimmer, professor of labour law at Berlin School of Economics and Law, on 'How it all started – the role of Germany concerning the roll back of labour law in the EU'. Professor Antonio Baylos Grau from the Universidad de Castilla-La Mancha will speak on 'Spain and other South-European countries as drastic examples of austerity of labour law and collective bargaining'. He is to be followed by Stefan Clauwaert, senior researcher at the European Trade Union Institute in Brussels, speaking on 'Trade Union Strategies in Europe against the policy of austerity'.

All Haldane Society members and friends are invited to attend this timely conference. It is highly likely that the ELDH will hold its executive committee in Paris the following day. All are welcome.

Bill Bowring

6: In a residence dispute in the family courts, *Q v Q* [2014] EWFC 7, where the father was unrepresented, the President of the Family Division, Munby P, declared that the court could order Her Majesty's Court Service to pay for legal representation of an unrepresented party if the Legal Aid Agency refused to grant exceptional funding and failure to pay for legal representation would breach's the party's Article 6 ECHR rights.

7: The Extraordinary Chambers in the Courts of Cambodia found Nuon Chea and Khieu Samphan, two former leaders of the Khmer Rouge. guilty of crimes against humanity. The UN-assisted court convicted them of murder, political persecution and other inhumane acts and sentenced them to life imprisonment. Nuon Chea was second in command to Pol Pot.

9: The killing of Michael Brown, an unarmed man, by police, triggered rioting in the town of Ferguson, Missouri, USA. Protests continued over two weeks, as residents demanded accountability for the shootings. On 28th August 2014, five people caught up in the protests sued the Police Force in Ferguson for $40 million because of excessive force used during peaceful demonstrations.

20: Hundreds of people gathered in Dublin to call for a change in Ireland's abortion laws after a victim of rape was refused a termination and forced to give birth by c-section early.

Will food banks be just a way of life?

In 2010, the Trussell Trust provided food to around 41,000 people, but in the eight months leading up to Christmas 2013 the number increased to more than half a million – a third of whom are children. Since then a Government commissioned report, *Household Food Security in the UK: A Review of Food Aid*, in February 2014, concluded that low incomes, unemployment and benefit delays have combined to trigger increased demand for food banks among the UK's poorest families. The report directly contradicts the claim of the coalition Government that the rise in the use of food banks is linked to the fact that there are now more of them. It says people turn to charity food as a last resort following a crisis such as the loss of a job, or problems accessing social security benefits.

Confronted with these facts by the Chair of the Trussell Trust, the Secretary of State for Work and Pensions, Iain Duncan Smith MP, retorted: 'I strongly refute this claim and would politely ask you to stop scaremongering in this way. I understand that a feature of your business model must require you to continuously achieve publicity, but I'm concerned that you are now seeking to do this by making your political opposition to welfare reform overtly clear.'

Sadly all three main political parties reiterate the same message that there is no more money for welfare. Ed Balls MP, Labour's shadow Chancellor, has repeatedly stated that should Labour return to power they will continue with the coalition's spending plans.

The scale of Britain's growing inequality was revealed by a report from Oxfam, showing that the country's five richest families now own more wealth than the poorest 20 per cent of the population. The report, *A Tale of Two Britains*, shows that the poorest 20 per cent in the UK had wealth totaling £28.1 billion – an average of £2,230 each. The latest rich list from *Forbes* magazine showed that the five top UK entries – the family of the Duke of Westminster, David and Simon Reuben, the Hinduja brothers, the Cadogan family, and Sports Direct retail boss Mike Ashley – between them had property, savings and other assets worth £28.2 billion.

Yet apparently there is no money left for social security, a living wage, or house building. £750 billion is locked away in banks by the rich, who see no immediate way to make a profit so they sit on the money and let it collect interest. According to *The Times Richlist*, 1,000 of Britain's richest people increased their wealth by £155 billion last year, enough to wipe out the nation's deficit overnight.

In response to this crisis, in every town the length and breadth of this country a food bank has been established. As socialists we accept that food banks are established by well-intentioned people and organisations who want to help, but does a food bank without politics actually help? Poverty is man-made – it is not like a hurricane or a flood – and given it is a man-made problem it can be solved. Is it not time for the organisations organising food banks to not just say how bad things are, but to look to the trade unions and the anti-cuts movement to ensure that those who are using the food banks become an organised force?

In response, those who are involved in the provision of food banks may retort that food is a charitable and not a political issue. This has not stopped the Conservatives weighing into the debate. Norman Tebbit, Tory grandee and arch Thatcherite, called on the Government to investigate if people using food banks are in fact spending their money on junk food.

One step Labour councillors could take to set a different tone would be setting a 'needs budget'

Thousands marched through London in August against Israeli attacks on Gaza.

August

24: The Metropolitan Police decide not to charge a number of undercover police officers who had sex with women campaigners who were unaware of the real identities of the officers.

60% The increase in police use of **stop and search** powers since 2001.

30% Decrease in arrests over the same period.

90% Number of stops that don't lead to an arrest.

25: The Mayor of London, Boris Johnson, calls for the presumption of innocence to be reversed for terror suspects in cases where Britons travel to Iraq or Syria.

26: The Rotherham Report was published exposing the extent of child sexual abuse in Rotherham. More than 1,400 young people between 1997 and 2013 were identified as victims. The failure of the police and social services to act on information shared by victims was highlighted as a serious failing, which allowed the abuses to continue unchecked.

and rejecting the policies of passing on the effects of cuts to working class people.

Surely it is also time for food banks and those who organise them to get political and mobilise. Like the National Unemployed Workers Movement in the 1930s, they could play a key role in galvanising the fight for the right to work and the right to a living wage rather than poor people having to constantly fall back on charity. There is a danger that without such a struggle, food banks will become an acceptable part of life.

Paul Heron

28: The Social Mobility and Child Poverty Commission released a study on elitism in British society. The report found that the judiciary was the most elitist profession in the UK. Seventy-one per cent of senior judges attended private school despite only seven per cent of the general public attending a private school.

Young Legal Aid Lawyers

This regular column is written by YLAL members. If you are interested in joining or supporting their work, please visit their website **www.younglegalaidlawyers.org**

Testing times for Grayling

On 15th July 2014, the High Court handed down its eagerly anticipated judgment in *R (Public Law Project) v Secretary of State for Justice* [2014] EWHC 2365 (Admin). This was the Public Law Project's challenge to Secretary of State for Justice and Lord Chancellor Chris Grayling MP's abhorrent residence test. The residence test – which I have written about before in this column – would restrict legal aid to those who can prove 12 months' lawful residence in the UK, denying many migrants, as well as a sizeable proportion of Britons unable to produce the documents to prove their residency, the protection of the law. Just over a fortnight before the residence test was due to come into force, a specially convened three court division of the High Court unanimously condemned the measure as unlawful. The Ministry of Justice has been granted permission to appeal but for now at least, the introduction of the residence test is on hold.

The judgment is a significant one for a number of reasons. Firstly, it is a rare and much needed victory for supporters of a fair justice system. Since the enactment of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), the political will in Parliament to fight for legal aid has waned. The result has been several further rounds of cuts implemented without demur on the part of our elected representatives. Meanwhile, the courts, which have been called on to adjudicate on the legality of the cuts and on the inevitable systemic problems which have resulted, have shown their traditional reluctance to intervene with matters of policy. The decision of the High Court in *R (Howard League) v Lord Chancellor* [2014] EWHC 709 (Admin) (an unsuccessful challenge to the legality of regulations cutting legal aid for prison law which is presently being appealed) and the Court of Appeal in *R v Crawley* [2014] EWCA Crim 1028 (allowing a large scale fraud trial to proceed despite the failure of the Financial Conduct Authority to find sufficient advocates to take the case on, following cuts to criminal legal aid) provide two recent examples. Victory against the residence test bucks this trend.

Secondly, taking a step back from the sometimes esoteric world of legal aid, the challenge to the residence test also stands out as a rare success in the wider battle in the courts against the Government's austerity programme. The Fawcett Society's challenge to the Government's emergency budget (*R (Fawcett Society) v Chancellor of the Exchequer* [2010] EWHC 3522 (Admin)), and the challenges to the benefit cap (*R (JS) v Secretary of State for Work and Pensions* [2013] EWHC 3350 (QB)) and the bedroom tax (*R (MA) v Secretary of State for Work and Pensions* [2014] EWCA Civ 13) are perhaps the most significant examples of austerity policies surviving the scrutiny of the courts, but many others could be cited. In this respect the decision in the residence test case is something of a beacon.

Thirdly, on any view, the decision is one of constitutional significance. Cases in which the courts declare that a particular Government policy conflicts with fundamental constitutional principles do not come along often. When they do, they provide an apt reminder of the importance of an independent judiciary in upholding the rule of law. The decisions of the House of Lords in the Belmarsh litigation (*A v Secretary of State for the Home Department* [2004] UKHL 56 and [2005] UKHL 71) condemning both the internment of foreign terror suspects and the Labour Government's reliance on torture evidence, or the decision of the High Court in *R (Medical Justice) v Secretary of State for the Home Department* ([2010] EWHC 1925, a decision subsequently upheld by the Court of Appeal) finding that the Home Office practice of removing certain migrants from the country with less than 72 hours notice, abrogated the constitutional right of access to justice, are textbook examples. The residence test judgment should sit proudly beside these decisions in the law reports.

Turning to the judgment itself, the challenge succeeded on two grounds. The first ground, was that the decision to restrict legal aid on the grounds of residence lay outside of the powers conferred on the Lord Chancellor by LASPO. The purpose of LASPO, self-evidently, was to restrict legal aid to those most in need. So the power within LASPO to expand or contract the legal aid scheme must be exercised to promote that goal. Removing legal aid from non-residents was not a way of achieving this purpose: non-residents are no less needy then residents. And so the test was ultra vires. An argument elegant in its simplicity, as the mathematicians might say. >>>

Pictures: Jess Hurd / reportdigital.co.uk

Grayling: a kick on the shins.

Young Legal Aid Lawyers

>>> Thinking back to 2010, some may recall Jonathan Djanogly MP's wearisome refrain in debate after Parliamentary debate, that LASPO preserved legal aid for the most important cases, where it was needed most: arrant nonsense given the extent of the cuts and used by the Minister as a device to stymie debate and avoid answering the difficult questions thrown up by LASPO. There is a certain irony that this empty rhetoric should now come back to haunt the Government in this way.

The second ground was more involved: that the residence test unlawfully discriminated between those cases of the highest priority for which the State had chosen to provide legal assistance, on grounds of nationality. That this distinction was discriminatory was 'beyond question'. The issue was whether the discrimination could be justified. According to the High Court, it could not be. The context of the measure was not akin to the distribution of welfare benefits, where the State will be afforded a generous degree of latitude. Rather, the context was that the Government had decided that legal aid should remain available to hold the State to account and check the exercise of executive power, and was now seeking to restrict that protection on the basis of residence, in order to save money. This, the High Court held, was not permissible. The State may choose for itself what money it invests in the justice system. But within that system, the choices made must not be discriminatory. An argument which, in a neat piece of constitutional symmetry, found its roots in *A v Secretary of State for the Home Department* [2004] UKHL 56, the first of the Belmarsh cases.

Perhaps the most striking aspect of the decision was the highly politicised language of the judgment. Lord Justice Moses, giving the judgment of the High Court, was unflinching in his criticism of the Government's motivations. 'Invoking public confidence' he observed 'amounts to little more than reliance on public prejudice'. His disapproval of the Lord Chancellor was no less exacting with Chris Grayling MP personally coming in for criticism for his briefing of *The Daily Telegraph*, mid-case, against the 'left-wing lawyers' (the Public Law Project) who had the temerity to bring the challenge. 'Unrestrained by any courtesy' Moses opined, the Lord Chancellor had overlooked 'that it is usually more persuasive to kick your ball than your opponent's shins'.

On those final thoughts it is interesting to note that on 8th September 2014, Sir Alan Moses – formerly Lord Justice Moses – having stepped down as a judge of the Court of Appeal, began his tenure as the inaugural chair of the Independent Press Standards Organisation (IPSO). Those who fear that IPSO will be afraid to speak out against abuses by the press may be in for a pleasant surprise.

Connor Johnston is a barrister and the Co-Chairperson of Young Legal Aid Lawyers.

Cowboys are in a league of their own

Charities and NGOs generally start from concerned groups of wealthy or well-connected individuals. They don't usually emerge out of Sunday league football teams.

But then Kiptik are not your everyday charity and the Easton Cowboys are certainly not any old sports club. The team is semi-legendary in their native Bristol for their unusual exploits around the world. They have played cricket in the ganglands of South Central Los Angeles and in 2007 became the first British football team to tour the West Bank.

Before all of that happened, in 1999 they embarked on a football tour to Chiapas in South East Mexico as an act of solidarity with the Zapatistas, the ski-masked rebels who in 1994 rose up against 500 years of oppression against indigenous peoples and quickly became a *cause célèbre* for the anti-globalisation movement. 'It was an amazing tour,' remembers centre back Roger Wilson. 'For myself and some of the others who went there, it changed our lives.'

All 25 Cowboys and girls were profoundly moved by what they had seen: ordinary men and women with limited resources working incredibly hard to improve their lives. 'It was one of the women who had gone on the trip who said "we've got a lot out of this, we should give something back"', says Wilson. 'I had already

Magna Carta Day, 16th June: 'Save Justice –

decided to go back out there and work on a water project but there was a feeling that we're not just going to work, we're going to raise money for it too'.

So in May 2000 the Easton Cowboys hired the Thekla nightclub in Bristol for a benefit night to raise money for a water system. Music was provided by local drum 'n' bass face DJ Suv, the decor by a then unknown artist named Banksy. The night raised over £1,400.

Shortly afterwards a separate group was formed to specifically raise funds for the Zapatistas, christening itself 'Kiptik', an indigenous word that translates as 'inner strength'. In the last decade

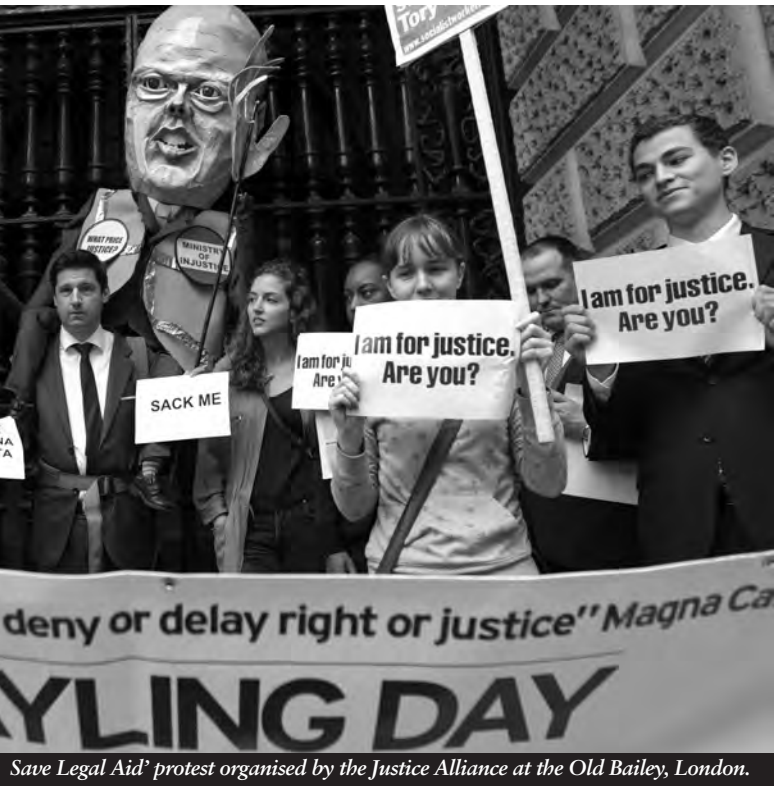
September

18: Unison announced it will launch a new judicial review into employment tribunal fees which resulted in a dramatic drop in claims. The Court of Appeal stayed an appeal on the prior judicial review application which had been rejected by the High Court in February 2014 as it was too early to ascertain the effects of the fees.

'Begging will not be tolerated.' Commander Alison Newcomb of the Metropolitan police explains why homeless people were arrested at 4am in raids across London.

18: In a historic referendum, Scotland voted 54 per cent in favour of staying in the Union. In the lead up to the referendum, the three major political parties promised further devolution powers to Scotland if the vote was no. Since the referendum, there has been disagreement among the political parties on how promises to introduce further devolution will be realised.

19: In a victory for the Criminal Law Solicitors' Association and London Criminal Courts Solicitors' Association, the High Court quashed a decision on the number of solicitor contracts to be allocated under reforms in criminal legal aid. The Honourable Mr Justice Burnett ruled that the consultation process into duty contracts was 'so unfair as to amount to illegality'. The challenge to the cuts in levels of fees was not successful.



Save Legal Aid' protest organised by the Justice Alliance at the Old Bailey, London.

Pictures: Jess Hurd / reportdigital.co.uk

and a half a succession of volunteers from around the UK have travelled to Chiapas, helping the Zapatista communities dig trenches, build water tanks and construct water systems. The group has raised over £120,000, money that has provided fresh water for over 5,000 people.

This is remarkable considering that, unlike other NGOs, Kiptik is an entirely voluntary organisation. No members are paid. 'It's small scale so all the resources that we've collected go straight into supplying materials', says Wilson. 'All the way through the process there is a policy of trying to make it sustainable, passing on knowledge and skills, to make the technology accessible to people. I'm proud that despite having no experience in doing anything like this we have had a go. And we've created a relationship between two very different groups of people that is unmediated.'

'Because it's not just about delivering material resources, it's about the interaction that goes on and the fun we've had with the people out there. They are communities in resistance, which is not an easy thing to be for two decades. To have some level of involvement in that is great.'

Will Simpson

For more info go to www.kiptik.org.

Supreme Court gives new rights to trafficking victims

In a landmark first case on human trafficking, *Hounga v Allen* [2014] UKSC 47, the Supreme Court has made new law which means that a child victim of trafficking can recover damages from her trafficker.

At the end of July 2014, the UK's highest court overturned the Court of Appeal who had refused the victim – who was trafficked at age 14 – the right to recover compensation.

The Court of Appeal had held that because the child had no right to work, she could not pursue her claim for race discrimination.

In a strongly-worded judgment, the Supreme Court found that the victim was subject to 'serious physical abuse'. The Supreme Court held that to permit the trafficker to escape liability would be 'an affront' to public policy.

In the majority judgment of Lord Wilson, the Supreme Court held that in cases where one party tries to rely on a defence that the other party was acting illegally, the court should consider public policy. A court should firstly decide on whether there is any public policy in permitting a defendant to rely on the defence of illegality. It should then decide if permitting reliance on the illegality defence would offend any other aspect of public policy. A court should consider 'the integrity of the legal system'.

The Court further held that to permit the trafficker to escape liability would be a breach of the UK's obligations under the Council of Europe Convention on Action against Trafficking in Human Beings 2005.

Juliette Nash, the Appellant's solicitor from the Anti Trafficking and Labour Exploitation Unit, said:

'We are delighted at this judgment. It will make a real difference to victims seeking redress from their traffickers. By its very nature, human trafficking often involves illegality. Victims of trafficking are frequently controlled by their traffickers. We see many reports of physical, sexual and emotional abuse.

'Importantly, the Supreme Court has recognised that victims in the UK can rely directly on the UK's international obligations such as the Anti-Trafficking Convention. This significantly improves protection for victims in the courts and tribunals.'

The case was supported by the Equalities and Human Rights Commission. The Anti Trafficking and Labour Exploitation Unit provides legal representation to victims of trafficking and labour exploitation. It assists victims to obtain safety, recovery and redress. Its founders are lawyers with specialist expertise in working with victims of labour exploitation and modern slavery.

Jamila Duncan Bosu

October

1: Moazzem Begg is freed from prison after the terrorism charges made against him were dropped by the CPS. He was detained on remand in Belmarsh Prison for seven months. His solicitor, Gareth Peirce, said that he should never have been charged.

19: In another challenge to legal aid cuts, the High Court granted Rights of Women permission to contest changes to legal aid in domestic violence cases. Victims of domestic violence can only obtain family law legal aid if they provide prescribed forms of evidence, some with a 24 month time limit. Many organisations claim that the new requirements are blocking victims of domestic violence from accessing legal representation.

30: Home secretary Theresa May announces plans for new powers to ban extremists from TV appearances. The gagging order is aimed at those who undertake activities 'for the purpose of overthrowing democracy'.

Gareth Peirce on the death of **Gerry Conlon**, who, as one of the Guildford Four, spent 15 years in prison for a crime he didn't commit

'Everyone had been wrong and he had been right'

In the first week of June 2014, Gerry Conlon reluctantly admitted himself into Belfast Royal Victoria Hospital, fearing pneumonia and that treatment might temporarily ground him. Instead, he was told he had incurable lung cancer and little time left to live. He willed himself to prolong his survival. For the first time he had found peace, with someone he had now met for a second time, the first briefly in London in 1989 when he burst out of the doors of the Old Bailey. Without a word needing to be said, Gerry and his daughter realised immediately that he was her father. Overwhelming happiness came when he could for the first time respond – he had come home, estranged until then from his mother Sarah Conlon; he cared for her in the year before she was to die. Until then he had inhabited a world that was a form of hell. Since 1974 all he had dreamt of was freedom and yet when it came, the poison of those 15 years had permeated his whole being.

When he spoke with Guantánamo survivors, he found practices of the 21st century mirrored those of the 1970s; he too had been hooded, shackled and subjected to rendition – from his home in the North of Ireland to a police station in Surrey –

Gerry Conlon: 1st March 1954 – 21st June 2014

threatened, brutalised and tortured until he confessed to the IRA bombings of pubs in Guildford and Woolwich. Yet the claim that four innocent and improbable young people were responsible should have been immediately derailed by the cast iron alibis of two. Instead, the intimidation of alibi witnesses, or in the case of Gerry Conlon, the burial of a statement that proved he could not have been anywhere but at a Kilburn hostel for young Irish men, overcame that obstacle. Even more inconveniently, the IRA unit that had carried out some 60 other attacks to which Guildford and Woolwich were identical was captured.

Some two years later, in 1976, the Court of Appeal heard first hand the testimony of the IRA unit – they were responsible and no one else. In a determined insistence that it was for judges and not a new jury to decide upon new evidence, the four appellants were sent back to prison for another 13 years. In 1980, Gerry Conlon's father Giuseppe died in an English prison. He had travelled from Belfast to rescue his son, only to be charged together with Gerry's aunt, uncle, cousins and neighbours, with possession of explosives. This time it was the turn of the scientists, **>>>**

>>> who asserted falsely that the hands of each tested positive for nitroglycerine. By the time of Gerry's release, the story of the horror that visited this family was known to every person in Ireland. It represented in one narrative the ordeal of the nationalist population of the north and the history over centuries of the whole of the island of Ireland.

Born in Belfast, growing up in the impoverished, warm and close-knit community of the Lower Falls Road, Gerry was the much loved son of Giuseppe and Sarah (Giuseppe, whose death from emphysema came from working in a lead factory and Sarah, a cleaner in the kitchens at the Royal Victoria Hospital). His childhood was one he described as happy. He scraped through primary school at Raglan Street and at St Peter's Secondary School engineered his demotion to class 1D from class 1C where many of the boys were too studious for his liking; a transition likely to have determined far more than the prospect of an academically inclined future. Class 1C learnt Gaelic and the orientation of the history that was taught was Irish; had he stayed in that class he considered later he might have possessed a greater awareness of the history of Ireland

Picture: Jess Hurd / reportdigital.co.uk

Gerry Conlon speaking at a demonstration against the cuts in legal aid, London 2013.

Gerry Conlon's life is a reminder that wrongful convictions happen everywhere

by **Michael Naughton**

As Gareth has written, Gerry Conlon, wrongly jailed for a 1975 IRA bombing in which he had no part, died on 21st June 2014 at the age of 60. The case of the Guildford Four remains one of the most famous miscarriages of justice in Britain – but more and more cases of wrongful imprisonment are coming to light around the world.

On 18th June 2014, it was widely reported that Jonathan Fleming, who in April 2014 successfully overturned his conviction for the murder of Darryl Alston in 1989, had begun a lawsuit against the City of New York for the 25 years he spent wrongly incarcerated.

It is alleged that prosecutors knowingly manufactured a case against Fleming, even dropping criminal charges against a key prosecution witness in return for false identification evidence. Fleming was on a family holiday in Disneyland at the time of the murder. He is now suing the City of New York for $162 million.

An incredible story, we might think, but one that is becoming increasingly commonplace. And the growing awareness of cases like this is now fostering a global social movement to help innocent victims of wrongful convictions.

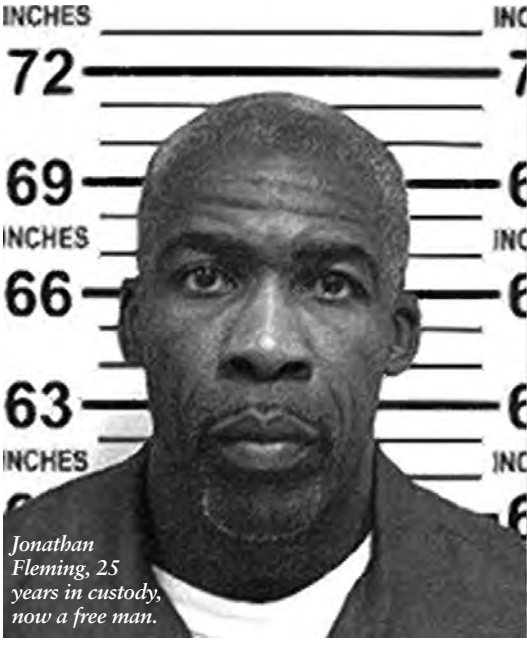
Injustice goes global

In a recent case from the Netherlands that was overturned in November 2013, Andy Melaan and Nozai Thomas served eight and five years respectively for the murders of brothers Lisandro and Wendell Martis. Separate alibi evidence for the men that was presented at the appeal hearing proved that Thomas's confession, obtained under extreme pressure from the police, could not have been true, with the public prosecutor conceding that there was no evidence at all that connected either him or Melaan to the crime.

In June 2012 in Japan, Govinda Mainali overturned his conviction for rape and murder after 15 years of wrongful imprisonment. New DNA evidence proved that semen and hair found at the crime scene were not his. His conviction was based on the false testimony of his former flat-mate, who claimed he was illegally detained by the police for almost three months and often interrogated for ten hours a day until he broke and was forced to sign a statement.

In the UK, Victor Nealon in December 2013 overturned his conviction for an attempted rape outside a nightclub in Redditch, Worcestershire. He spent 17 years in prison before DNA evidence proved that he was not the perpetrator. Like Jonathan Fleming, he too was convicted on eyewitness identification evidence.

In March 2014, José Guadalupe Macías



Jonathan Fleming, 25 years in custody, now a free man.

Maldonado, who had been exonerated after serving 11 years in prison, soaked himself in petrol and set himself on fire in the Civic Center Plaza of Mexicali, Baja, Mexico. He committed suicide in protest after the financial support that he alleged the state government had promised him failed to materialise. Mr. Macías, convicted of murder in 2002, was convicted thanks to mistakes in the investigation conducted by the prosecution.

This apparently random smattering of cases just illustrates that wrongful convictions occur in legal systems in all parts of the world, and stem from the same sorts of causes. They are very much the tip of a worldwide iceberg of wrongful convictions.

They are testament to the universality of shoddy and corrupt policing, over-zealous

and a more defined republican point of view. Instead, he clattered through life in Belfast as a minor delinquent, scuttling back and forth to London, more than once pursued by the recipients of his activities.

In no way equipped with self-discipline or even physical stamina or fortified with any political rationale for his fate, he entered the hell of the English prisons of the 1970s when to be Irish and even more, IRA, was to be in danger. Year after year of solitary confinement, punishment imposed for endlessly angrily asserting his innocence, movement without notice from prison to prison, often just when his mother was using her one week's holiday to visit her husband and her son at different ends of England, humiliation, degradation and fear nevertheless fuelled an insistence that he could and would take charge of his own fate. He clamoured and shouted and wrote and in the later years telephoned and besieged the great and the good until gradually there was movement, by the slowest of degrees. The release when it came, came with the sudden falling of the citadel; all of the evidence had been fabricated. Everyone had been wrong and he had been right.

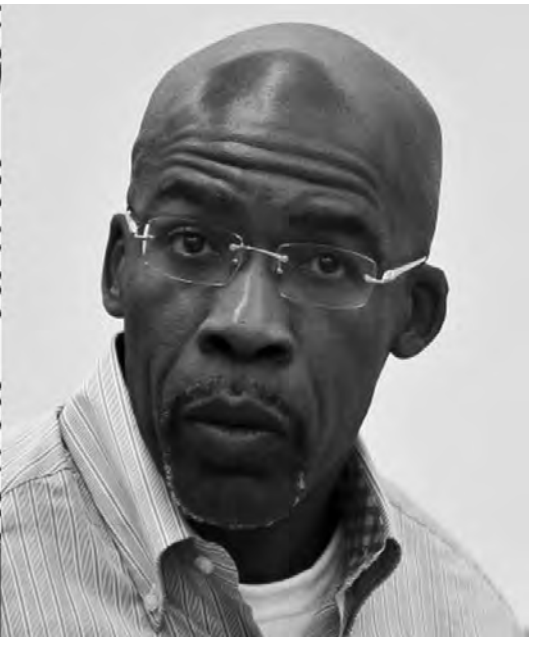
The euphoria of release almost immediately evaporated in the pandemonium of public attention; the longed for reunion was with a family itself too damaged to accommodate the ways in which he was haunted by demons. There was nevertheless an acute, intelligent, engaging and vividly articulate raw voice which made the comprehending of injustice an elementary exercise. But for many years he fell into an abyss from which he could not climb out, hiding like a recluse in a tiny apartment in Plymouth, knowing no one, physically and mentally broken.

Unable to find joy, he resorted to drugs, attempting to experience what was otherwise inaccessible. Finally, a psychologist in Plymouth and a psychiatrist in Belfast began to identify, if not to fix, some of the broken pieces; Gerry's persistent reactivation of trauma was as bad as any observed throughout the conflict in the north of Ireland; he exhibited extraordinary recall, remembering the pattern of the policeman's tie in the Surrey police station, the tick of the prosecutor's face, the horror of his father's last days. Every night was a torment.

But struggling through this, this brave and endearing human being made an enormous mark. He repeatedly travelled in Australia to challenge injustices there, most emphatically those to the indigenous Australian population; he spoke at every prestigious university in the USA about innocent prisoners; he proffered himself as the best evidence of all why the death penalty should be abolished; he visited the family of Shaker Aamer, the last British resident in Guantánamo and campaigned endlessly for his release, berating Irish Americans for their instinctive support for him when he was wrongly detained and their failure to do the same in relation to a new suspect community, the Muslims.

His death has shocked a swathe of peoples. His partner, his daughter and his sisters knew already the enormity of the battle he fought and the importance of his victory. In the three weeks he knew his life was coming to an end, he and they came to understand too the volume of affection for him across the world.

Gareth Peirce is a solicitor at Birnberg Peirce Solicitors and a Vice President of the Haldane Society. This is an edited version of an obituary which was published in *The Guardian* on 22nd June 2014.



prosecutors who put winning cases above fair trials for the accused, unreliable 'expert' and forensic science evidence, witnesses who give false or mistaken evidence, and defence lawyers who fail to present evidence that might protect their clients from wrongful conviction.

As the case of the Guildford Four showed, proving wrongful conviction is often a matter of hard graft and dogged re-investigation of the facts.

The Innocence Network

The Innocence Network is an affiliation of organisations around the globe that provide pro bono legal services to convicted individuals who maintain their innocence and which conduct investigations to re-examine their cases. The network currently has 63 member organisations, with 52 in the USA and 11 in other countries including Australia, Canada, New Zealand, France, Ireland, Italy, The Netherlands, South Africa and the UK. Each organisation operates independently, but they all coordinate to share information and expertise.

In recent years, initiatives to assist alleged innocent victims of wrongful convictions have also sprung up in Latin America (Argentina, Bolivia, Chile, Mexico, Nicaragua, Paraguay, Peru, and Puerto Rico), Eastern Europe (Poland, Czech Republic), Africa (Nigeria, The Gambia) and Asia (Singapore, Taiwan, Philippines, China). These organisations also report similar flaws and failings in their criminal justice systems, problems and practices that see innocent individuals convicted and imprisoned for crimes they did not commit.

My colleagues Thomas Osborne and Gregor McLennan have written in other contexts about why certain ideas have 'legs' and the notion of 'critique-proof' concepts. Both are useful ways to look at the international social movement that is now emerging to assist alleged innocent victims of wrongful conviction all over the world. Even the staunchest of advocates for the criminal justice system would find it difficult, if not impossible, to argue against the idea that innocent victims of wrongful convictions should be assisted.

The argument for this challenge to the system is particularly strong when it invokes the broader societal consequences of wrongful conviction. The University of North Carolina's Frank Baumgartner and his colleagues recently devised the term 'wrongful liberty' to describe the situation where an innocent person is wrongfully convicted and imprisoned while the true perpetrator is left free to commit more crimes.

Citing data from the Innocence Project, Baumgartner et al's research showed that of the first 300 individuals exonerated through DNA testing since 1992, 153 cases identified the true perpetrator. Of these, 130 perpetrators were later convicted of 139 additional violent crimes, which included 33 murders, 76 sexual assaults, and 30 other violent crimes – which would not have occurred had the perpetrators been convicted for their original crimes.

Beyond left and right

The concept of wrongful liberty is critique-proof. It is quite simply a winning argument that lends weight to the mantra of innocence efforts around the world: 'When the innocent are wrongly convicted, the guilty remain at liberty with the potential to commit further crimes.'

The collateral damage of wrongful conviction is now not only about the innocent victims of wrongful convictions and imprisonment and their families: more and more, we see the damage done to the victims of additional crimes committed by true offenders benefiting from wrongful liberty while innocents serve their sentences for them.

This unites the 'left' and 'right' of the conventional political divide on criminal justice. It emboldens those who aim to protect all members of society, both from the harms of crime and of wrongful convictions, by ensuring that only the genuinely guilty are convicted. Only then will criminal justice systems truly deserve their title.

Dr Michael Naughton is a Reader in Sociology and Law at the University of Bristol. He is a founder and director of the Innocence Network UK and the University of Bristol Innocence Project. This is an edited version of an article which first appeared in *The Conversation* and is re-printed here with the author's kind permission.

'A healthy environment is not only key to the achievement of human rights such as the most fundamental of all, the right to life, but also increasingly recognised as a human right in itself. This healthy environment, in fact the Earth's entire ecosystem, is threatened by the increasing depletion of resources, biodiversity loss and climate change. Dangerous industrial activity is responsible for a large proportion of this – but the corporations and individuals causing widespread damage and destruction often remain unpunished. The large-scale damage or destruction of ecosystems is called ecocide, from the Greek "oikos" for home and the Latin "caedere" for kill.'

Prisca Merz argues it is now time to act on...

ecocid

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Our current legal framework does not possess the necessary tools to stop ecocide. New tools are needed to safeguard not only our and in particular future generations' rights, but also the rights of nature itself. For over 40 years, different formulations of an international environmental crime have been discussed to halt this destruction through criminal liability of decision-makers. Now the time has come to implement it.

Forty years of discussions have proven the viability of the concept

Ecocide in the broadest sense describes the destruction of the natural environment. The term became known after World War Two and in particular the Vietnam War which demonstrated the horrors of intentional environmental destruction to a large audience around the world, leading to widespread public protest. A draft Ecocide Convention was published in 1973, calling for ecocide to be recognised as an intentional war and peace crime.

This public movement was picked up by the International Law Commission and heads of States when they discussed the draft of the Rome Statute establishing the International Criminal Court. Until 1995, the wilful causation or ordering of widespread, long-term and severe damage to the natural environment was included in the draft Rome Statute as a separate crime but then withdrawn at the 11th hour. Thus, the only remaining provision is the war crime of 'widespread, long-term and severe damage to the natural environment'; resulting in the absurdity that today ecocide is a crime during war time but not during peace.

Academia continued to discuss different definitions and concepts for the international environmental crime. In 2010, British barrister Polly Higgins requested the International Law Commission amend the Rome Statute to include 'ecocide' as an additional crime against peace. She defines ecocide as the 'extensive damage to, destruction of or loss of ecosystem(s) of a given territory […] to such an extent that peaceful enjoyment by the inhabitants of that territory has been or will be severely diminished'.

Higgins and others underline the need for ecocide to follow the principle of superior responsibility. This means that those responsible for and ordering ecocide, for example the CEO of a large petroleum company having caused a massive oil spill, should be liable to prosecution rather than the employee who might have been working on the platform where the ecocide happened.

The second principle is liability without intent. Even if ecocide was not the goal but rather the side-effect of the activity, those responsible and those helping them must still be liable for the damage they cause. The focus shifts from assessing risks and probabilities towards assessing potential consequences, implementing the precautionary principle: if an activity has the potential to cause wide-spread damage and destruction it must not be implemented.

Only if millions of people across the world demand it will our leaders act

Only governments have the power to request amendments of the Rome Statute. We, however, have a much stronger power: the power of our joint voices.

It is a well-known fact that government will not act on controversial issues involving vested industry interests unless the public strongly **>>>**

>>> demands so. That is why a citizens' movement was started in 2012 to request an EU-wide ecocide directive, as a first step towards an international crime of ecocide. Over 175,000 citizens have so far supported the initiative with their vote and signing it is still possible at www.endecocide.eu. While the threshold requiring a reaction by the European Commission (one million signatures within one year) has not been reached, the petition will be discussed in the European Parliament soon.

This same movement was among the founders of a coalition of civil society organisations supporting the Charter of Brussels – calling for the establishment of an International Criminal Court of the Environment and Health via amendment of the Rome Statute. This coalition brings legal experts together with civil society organisations from across the world.

We have to return to the real meaning of justice and law

Recently, I heard Judge Weeramantry, former vice president of the International Court of Justice, speak. He posed the question that how it could be that our current legal system had lost its connection to justice? Today, law is often preoccupied with the enforcement of contracts rather than asking the more fundamental question of what a just solution for a particular problem would be. We have to come back to the fundamental questions: what is justice and how can we ensure justice for future generations?

We have created a world in which investors can sue governments for protecting their people from dangerous industrial activity, where pension funds meant to ensure a good life for our age invest in fossil fuels rather than preserving the very basis of life we depend on, and where short-term profit considerations overrule any kind of concern for sustainability and the long-term health of people, land and ecosystems.

It's happening everywhere

Making ecocide a crime sits at the heart of an emerging body of law called Earth law, seeking to transform the law to recognise the inherent rights of all of the Earth's inhabitants and ecosystems to exist, thrive and evolve.

Two outstanding examples on the international level are the World Charter for Nature, adopted by over 100 UN member states in 1982, and the 2007 Declaration on the Rights of Indigenous Peoples. Following on from the 1989 legally binding International Labour Organisation (ILO) Convention 169, it establishes the rights of indigenous peoples and individuals, among others to the conservation and protection of the environment and productive capacity of their lands or territories and resources.

Several countries are also leading by example. Ecuador included an entire chapter about Earth rights in its 2008 constitution. This right has already been enforced in the first successful rights of nature case in *Wheeler v Director de la Procuraduria General Del Estado en Loja, Juicio*. Bolivia followed suit in 2010 with its Law of the Rights of Mother Earth. Even a county in the United States, Mora in New Mexico, passed an ordinance establishing a local Bill of Rights to prohibit fracking. Several countries have recognised the rights or holiness of certain natural sites belonging to indigenous communities.

There are an increasing number of court rulings which attribute rights to nature, ecosystems, or animals. New Zealand extended personhood rights to great apes in 1999, followed by Spain in 2008. Dolphins have recently been attributed 'personhood' in India. France in 2008 condemned the world's fourth largest oil group Total SA, in a landmark ruling, to a fine for 'ecological prejudice' caused by the sinking of the Erika. This could establish a legal precedent for suing companies or persons over ecological disasters.

Efforts to promote access to justice and recognising standing to issue legal proceedings in the public interest, for example in the Aarhus Convention, are vital steps in our journey towards a world without ecocide.

A law for our children

At an international level, the principle to protect future generations is widely accepted, such as in the Stockholm Declaration and UN Framework Convention on Climate Change. Domestic law from a variety of countries also enshrines this respect for the needs of future generations. The 1993 children's case of *Opposa v Factoran* in the Philippines is a historic example of judicial reasoning that sought to prevent irreversible ecological damage, in this case deforestation, in the name of children both now and in future generations.

The pollution of food chains with heavy metals, genetic mutations due to radioactive contamination, and processes of bio-accumulation of chemical substances in living organisms all underline the urgent necessity to implement respect for future generations in law, through the recognition of future generations' rights to health and life. Recognising the crime of ecocide would allow the inclusion of transgenerational legal provisions in environmental and criminal law, linked to other dynamics concerning the recognition of new institutions for the juridical defence of future generations.

Ecocide affects every single one of us

Ecocide affects every single one of us. This is a law for the indigenous tribe that lost its drinking water due to pollution as much as for the Briton whose house is threatened due to fracking exploration nearby. It is as much for the mother worried about her child's future as the scientist developing new environmentally friendly techniques that need that little push to get to the market.

Ecocide disproportionately affects the less advantaged groups of society: workers in mines or drilling platforms, indigenous peoples or rural communities, those not able to afford to buy bottled water or protect themselves from air pollution. This law is an all-encompassing approach to bring the legal system back a bit closer to its original goal: enabling people to live a good life where they have legal tools to tackle injustice and unfairness.

It is an inherently just law. Rather than focus on individual workers – who are actually the primary victims of environmental pollution and low health and safety standards – it will be business leaders who are held to account. They are the ones deciding about whether a certain project goes ahead and reaping the profits. It is they who should also be held to account if it goes wrong.

With just one law, one idea – making those responsible criminally accountable for their action – we can turn around the way business is done across the planet. Currently, the main preoccupation of most business leaders is with profit maximisation, but if there was legislation under which they personally, as well as the corporation as entity, could be held accountable for the environmental damage they create, they would think twice before starting the next open pit mine or felling the next tree in the Amazon.

Ending ecocide requires nothing short of a paradigm shift: from perceiving the Earth purely as property or a set of resources to be exploited towards acknowledging the intrinsic value of ecosystems; the pleasure we retrieve from walking in a forest or drinking fresh water from a well. We have a legal duty to protect this ecosystem we have inherited from our ancestors and depend on.

Young people are increasingly aware of the evidence of ecocide, its devastating consequences, and the need to act now. We all contribute step by step to making that paradigm shift happen. Every single person speaking about ecocide, every single signature on the ecocide petition contributes to creating the essential civil society movement needed to push for the radical change we need. The time to make it happen is now.

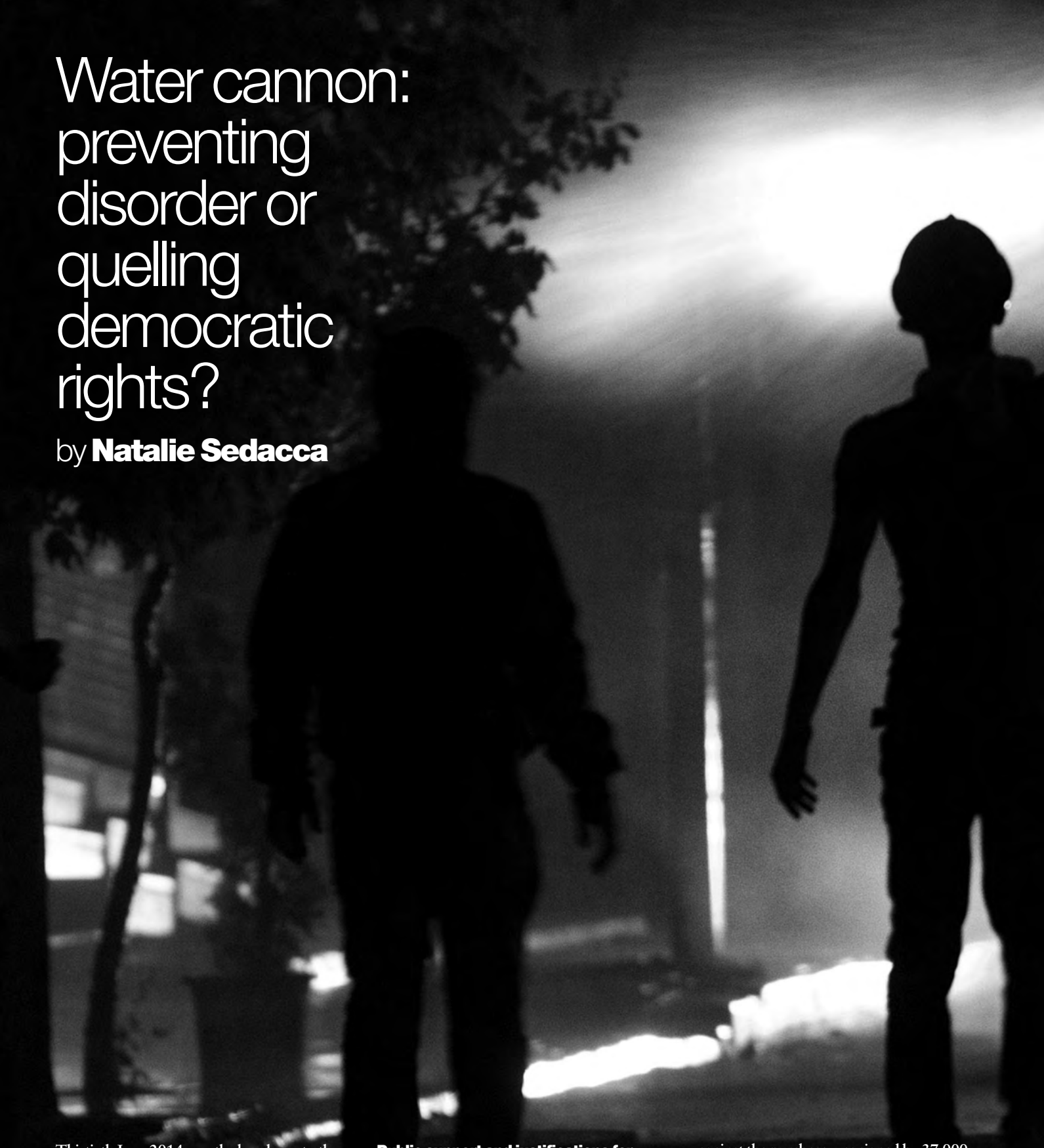
Prisca Merz is the initiator of the European Citizens' Initiative – End Ecocide in Europe. She is a member of the steering group of the Intiative and focuses mainly on legal research into ending ecocide.

Picture: Infrogmation (talk) of New Orleans (CC)

BP Oil Flood Protest at Jackson Square, New Orleans in May 2010.

Water cannon: preventing disorder or quelling democratic rights?

by **Natalie Sedacca**



Thirtieth June 2014 saw the handover to the Metropolitan police of the first water cannon to be used on the British mainland, purchased from German federal police at a cost of £218,000 to the taxpayer. This is despite the fact that approval from the Home Secretary is necessary before they can be used and remains outstanding to date. The Mayor of London, Boris Johnson, justified his decision to press ahead with the purchase prior to authorisation on the basis that they were available at a 'good price' and needed for the summer months, when disorder was apparently considered most likely.

Public support and justifications for introduction

The introduction enjoys a measure of popular support, with a poll conducted by the Mayor's Office for Policing and Crime finding a small majority (60 per cent) agreeing that water cannon would be useful for policing London and a somewhat larger majority (68 per cent) agreeing there was a 'small limited role' for water cannon in dealing with the most serious public disorder in London. However, the vast majority of respondents to a written consultation raised concerns about the introduction, while a change.org petition against the purchase was signed by 37,000 people.

The degree of support appears to stem in large part from the widely used argument that water cannon could have assisted police during the London riots of August 2011. Indeed, their introduction was first discussed in the wake of the riots, when consideration was being given to how such a situation could be better managed in the future.

However, as noted by former Green party mayoral candidate and London Assembly member Baroness Jenny Jones, 'The sort of disorder that's happened in last few years is

Turkish riot police using plastic bullets, CS gas and water cannon to disperse anti government protesters in Istanbul in June 2013.

Picture: Jess Hurd / reportdigital.co.uk

often by small groups of people, moving quickly, staying in touch with mobile phones and social media. Water cannon would be useless in that situation.' Reservations of this nature are not limited to opposition politicians but mirrored, for example, by Chief Constable of Greater Manchester police, Peter Fahy, who told the Home Affairs Select Committee on the riots that using water cannon and baton rounds would have been 'very, very difficult' in the sort of 'fluid...fast moving situation' that his officers faced during the 2011 disturbances. Even Boris Johnson had previously expressed similar reservations.

The fact that the instruments are known to be better suited for use at large, static, pre-planned events has led the Independent Police Complaints Commission (IPCC) to point out that unless the circumstances which they are to be used is clearly defined, there is a possibility of 'mission creep' whereby water cannon are deployed at events or protests for which they are neither suitable nor required, potentially conflicting with the police's obligation to facilitate peaceful protest.

To date, there are strong indications that water cannon are intended to be used against some political protests: at public engagement meetings in the lead up to its introduction, police showed videos of horse charges at student protesters in 2010 as well as the 2009 Gaza demonstrations outside the Israeli embassy in London. While they suggested that water cannon would be a less forceful way to disperse the crowd, there was no re-assessment about the level of force used nor explanation of where the crowd might have been able to go if water cannon had been used. Furthermore, consideration was not given to the way that a lively but peaceful protest could be provoked and turn violent as a result of such a weapon being used. >>>

>>> The concern about inflaming a situation is an important one. It was noted in the Home Affairs Select Committee report on the riots, which not only dismisses the 'usefulness' of water cannon in the situation but goes on to state 'that such use could have escalated and inflamed the situation further. The lessons learned in the past in Northern Ireland over such equipment should not be lost on policing in the mainland when rioting occurs. Water cannon… could have affected innocent bystanders, as well as rioters.'

The Association of Chief Police Officers (Acpo) have expressed similar reservations but gone on to refer to the cannon's potential effectiveness in situations such as 'defending a fixed and vulnerable/iconic location [and] separation of hostile crowds during demonstrations/disorder; creating distance between police and opposing factions', suggesting that there may be an intention to use the threat of water cannon against anti-fascist protests, or to disperse demonstrations outside embassies such as those seen in response to the Israeli bombings of Gaza.

Recent examples from public order policing show how quickly a protest that causes some level of disruption can be met with measures which may have initially been envisaged for more extreme situations. For example, the critical mass bike ride at the Olympic opening ceremony in July 2012 and two demonstrations against the English Defence League in London in 2013 were both considered serious enough by the police that conditions were imposed under sections 12 and 14 of the Public Order Act, with mass arrests made for breaches of those conditions. The UN special rapporteur Maina Kiai has since reported that the threshold for using sections 12 and 14 is 'too low' and presented a threat to the right to protest.

Therefore, while advocates of water cannon emphasise the fact that its use would need to be authorised by the most senior officers, it is difficult to be confident that this would prevent their deployment against peaceful protesters. It is also hard to understand why in a time of austerity, when cuts are being made to front line community policing, a substantial sum of money would be spent on instruments which are expected to be used extremely rarely and to have no impact on those protesting against cuts.

A 'less dangerous' method of crowd control?

The idea that water cannon is a preferable option to other public order tactics is exemplified by the Association of Chief Police Officers' statement that 'in the absence of the availability of water cannon tactics it is likely that police commanders would have to authorise alternative tactics (involving significant force) which may include … batons, mounted officers, vehicle tactics, police dogs or even firearms.' Apart from the fact that the use of these other weapons in public order situations is highly questionable, as noted above, it is simply not correct to assume that the use of water cannon is just unpleasant and does not cause serious injury.

The very country whose weapons are now being shipped over tells a different story, as the environmental protester Dietrich Wagner has suffered permanent damage to his eyesight after the deployment of water cannon during a protest in Stuttgart. After surrounding the protest and using water cannon to threaten the demonstrators, officers sprayed the cannon directly at Wagner's face from only 15 metres away, increasing the pressure so that it smashed through his cheekbone. Now blind in one eye and left with just five per cent vision in the other, he is unable to read, write or watch television.

This particular injury was apparently due to the water cannon being used in breach of regulations and other documented injuries are rare. Nonetheless, the instrument is inherently dangerous as it uses a spinning impeller pump, which creates pressure to send out a constant, powerful stream of water. As well as those caused by the direct impact of the water on the body, as in Wagner's case, there is also potential for injuries to result from the impact of debris caused by the jet. Furthermore, even if part of the use of water cannon is simply 'deterrent' – dispersing a crowd of protesters based on the threat of its use – this can still have a stifling effect on peaceful protest.

The fact that Wagner's injury took place during a peaceful demonstration involving students, workers and pensioners against an infrastructure project in the city centre further highlights the potential for these instruments being used outside the context of riots and 'violent' protests.

It is concerning that, despite having been accepted as being of little use for the situation which was the original idea for its introduction (the 2011 riots), the police and potentially the Government are pushing ahead with the measure. In effect, the fear of future disorder on the streets has been used as justification for a measure that could, instead, be used to clamp down on future dissent against austerity measures and other unpopular Government policies.

It is likely that the risk of such instruments being used will combine with other factors, including the threat of surveillance and inclusion on 'national domestic extremism' databases, to deter involvement in peaceful protest. Viewed in this context, the drive to introduce water cannon appears to be part and parcel of an increasing intolerance towards protests causing any type of disruption, even where they are not violent. As such, and particularly at a time when a final decision on authorising their use remains outstanding, it is important to campaign against the introduction of this further repressive measure in the interests of preserving rights to freedom of expression and assembly.

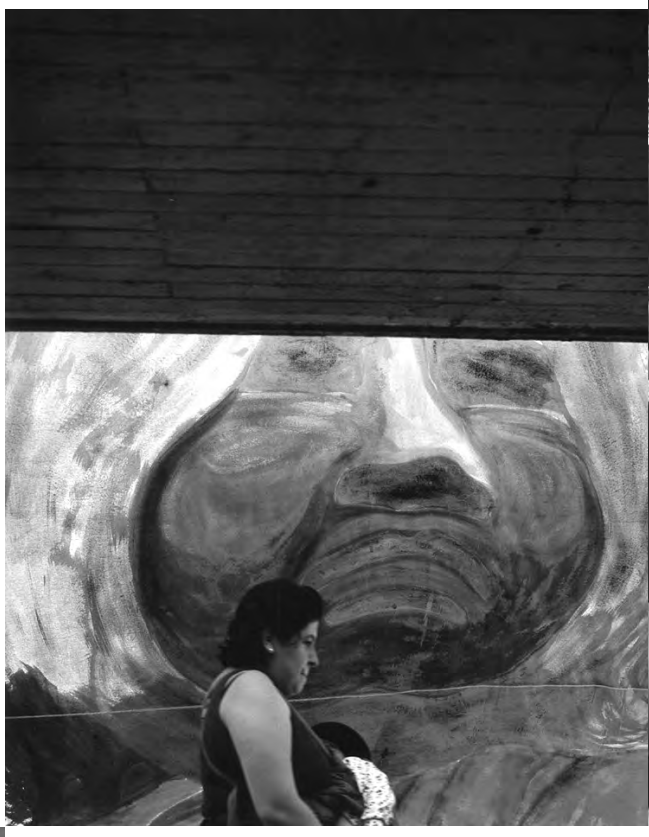
Natalie Sedacca is a solicitor at Hodge Jones & Allen LLP who works on civil liberties cases.

CREATING MEMORY IS OUR WEAPON: LA MARCHA

On 25th February 2001, the leaders of the insurgent Indian people of Chiapas launched a two-week mass march on Mexico City to remobilise and extend mass support for the demands of those sections of the Mexican population who have suffered most from the impact of neoliberalism on indigenous peoples. This photo essay features the photography of **B+** and **Coleman** of the Zapatista's famous march on Mexico City.

Twenty-three *commandantes* and one *sub-commandante* left the autonomous mountains of South East Mexico to travel to the Federal District of Mexico City with three demands:
(1) To seek approval of the Indigenous Bill of Rights;
(2) To seek the withdrawal of seven military bases from indigenous land; and
(3) To seek the release of all remaining EZLN prisoners. On 11th March 2001, they walked onto a platform in the Zócalo, Mexico City's main square, to see one million Mexicans cheer them and offer support and solidarity.

G
Che



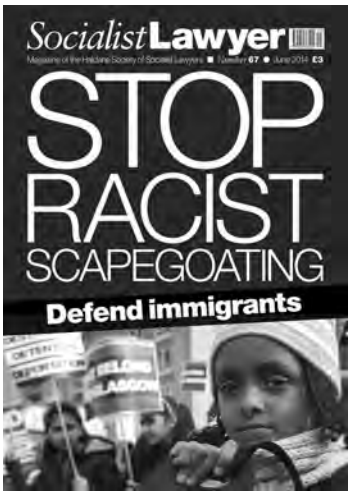
Es Mejor Morir de Pie
Que Vivir De Rodillas
C.G.H

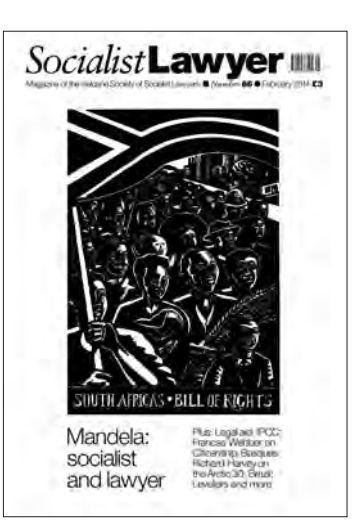
CHICANA
POWER

B+ (aka Brian Cross) was born and raised in Limerick, Ireland. He attended the National College of Art and Design in Dublin graduating in 1989 with a degree in painting. In 1990 he moved to Los Angeles to study photography at the California Institute of the Arts. While there he began work on a project entitled, *It's Not about a Salary: Rap Race and Resistance in Los Angeles* which was subsequently published by Verso Books in 1993.

Los Angeles-born artist **Eric Coleman** began taking pictures at the age of 12. His youthful hobby led to a career as a professional photographer in which, over a 10-year period, Coleman has grown to be an innovator with a unique style of photography. He deepened his appreciation and enthusiasm for photography while attending the Royal College of Art in London. There he was able to cultivate his distinctive style of visual communication while honing his craft with top-level professionals.

● Their photography and cultural work can be found at **www.mochilla.com**





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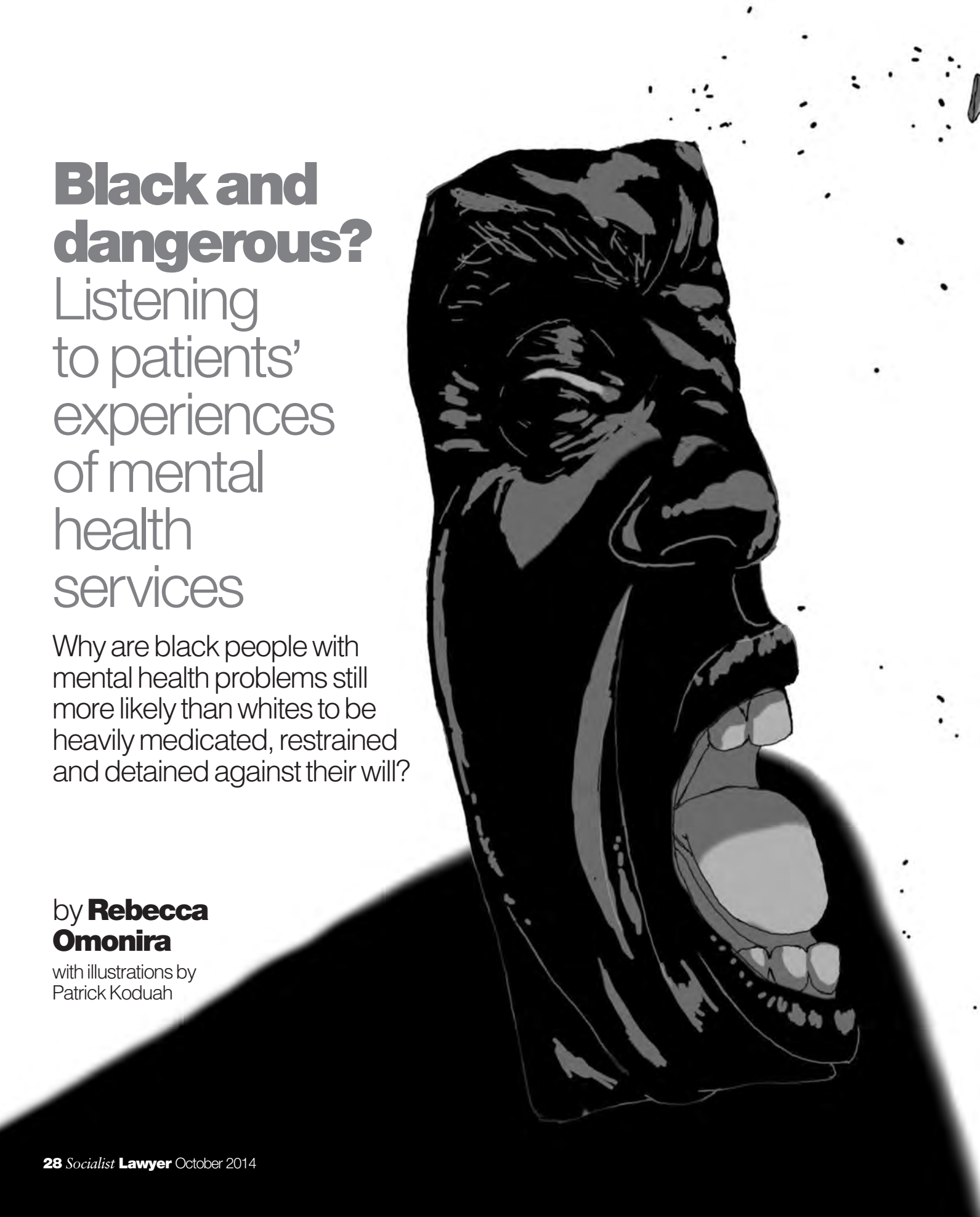
Black and dangerous?

Listening to patients' experiences of mental health services

Why are black people with mental health problems still more likely than whites to be heavily medicated, restrained and detained against their will?



by **Rebecca Omonira**

with illustrations by Patrick Koduah

The boy with pale brown skin and black afro is tall and has the face of a young child. He's wearing a baggy grey tracksuit and trainers. He turns away from the nurse, turns away from the other patients, his head raised, his face struck with irritation.

'He's new', Lawrence tells me. 'He doesn't want to take his meds.' Lawrence, a young black man in his early twenties, calls over to the boy: 'Calm down, man. Otherwise you'll go to Bevan.'

Bevan. That's a more secure ward, fewer privileges, says Neil, who visits the psychiatric ward for the People's Network, a local community group.

Lawrence nods and turns back to his laptop.

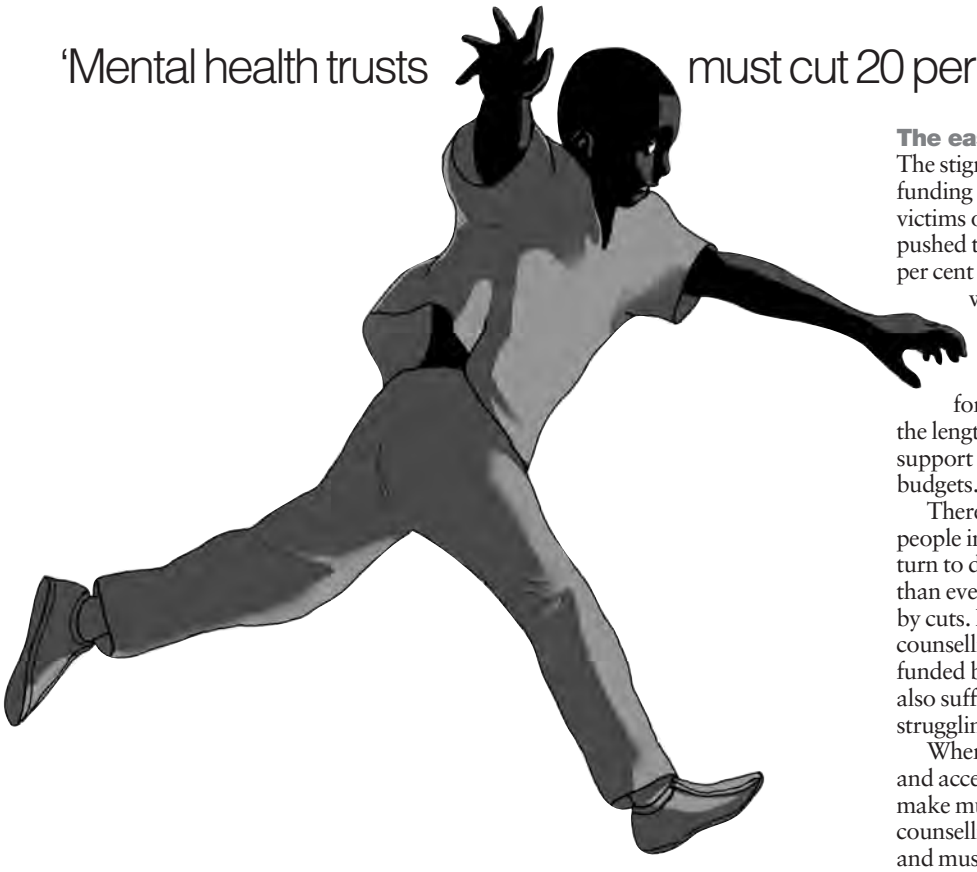
Neil, a shy, six-foot tall black man with a heavy limp, who spent 17 years fighting a drug addiction, reckons his drug habit grew out of his inability since childhood to accept his physical disability. Memories of being isolated and shunned haunt him and help him better understand the men he works with.

The boy kicks over a bright, yellow wet-floor sign and a loud alarm sounds. Nurses crowd him.

Lawrence goes back to his search on Amazon for books on the fall of Lucifer. He tells me about his weekly 20-minute consultation with a doctor. 'Are you seeing anything? Are you hearing voices?' he says, mimicking the consultant. Diagnosed with schizophrenia, Lawrence was sectioned after falling out with his grandmother. Being 'sectioned' entails being detained under section 2 or 3 of the Mental Health Act.

It is Lawrence's third time on the ward. Neil says a lot of the men have nowhere to go and struggle to get housing when they are released. They might get in trouble with the police. Once, they'd have been brought back to the ward. These days, because of bed shortages and poor aftercare, most hang about on the streets or in hostels after release. They often end up at the People's Network office, a few miles from the hospital; they run a soup kitchen one day a week. **>>>**

‘Mental health trusts must cut 20 per cent more than other hospitals,



>>> The ward’s lounge area is bright with large windows. The view is a green courtyard and the hospital’s redbrick buildings, no sky. A TV encased in a plastic box hangs on the wall. A limp, white man wearing a yellow bandana and baseball cap watches, eyes glazed. Tom, 28, doesn’t mind it here. It’s quite relaxed with a nice atmosphere, though sometimes there is ‘conflict’. He shifts slowly on the sofa; turning his head looks like a huge effort. Tom, diagnosed with paranoid schizophrenia, was sectioned after getting into a fight with the police. ‘I haven’t worked for seven years,’ he says, ‘before that I worked in construction, coffee shops.’

John, another man with a paranoid schizophrenia diagnosis, has spent much of his life in and out of mental health hospitals. A cheerful, chatty 45-year-old, he puts his current stay down to a scuffle with the police. ‘I get upset when I’m angry. To be black and upset is a cardinal sin.’

He says a fight with a police officer prompted his first sectioning 15 years ago. In court, he had a choice between prison and hospital. ‘They told me I wouldn’t have to take drugs, it would be better than prison, but it screwed up my life. Eight years of studying down the tube. At least if I had gone to prison I would still study.’ He had been working his way up to an interior design degree, he says, starting with a foundation course at the London College of Furniture.

‘I grew up with a superwoman, she used to go to work at nighttime,’ he says, rubbing his swollen ankles.

John’s mother emigrated to London from St Lucia in the 1960s and married his father, who worked for the post office. They had six children. ‘A middle class black family,’ he says. John has four children including a 29-year-old son lately diagnosed with schizophrenia. His son now lives at a halfway hostel.

Neil says there is an over-representation of black people on wards like this. ‘They can’t live their lives as free people; they are always being dragged back to the ward. The resentment builds up.’

The People’s Network spends a lot of time on the psychiatric ward, supporting patients and working with their local NHS trust to improve mental health care. But often the ward seems a place where patients are controlled and medication is used as a punishment, not treatment.

What happens outside the ward also creates problems. People queue outside everyday asking for help. They say it is going to get much worse.

The easiest cut

The stigma around mental illness makes it easy to cut funding for it. Easier still, since so many of the immediate victims of the cuts are poor blacks and other people pushed to the margins. Mental health trusts must cut 20 per cent more than other hospitals from their budgets, which, combined with changes to the benefit system, has intensified the pressure on vulnerable people.

Staff and charities say people are surviving for months without any financial support because of the lengthy assessment process for receiving employment support allowance and the changes to their personal budgets.

There was a time when, if the State failed in this way, people in poor areas suffering with a mental illness could turn to day centres for support. Such places matter more than ever these days as other services have been damaged by cuts. It can take months to get access to NHS counselling and the quality varies. Day centres, themselves funded by local authorities and mental health trusts, are also suffering from the impact of cuts in funding and are struggling to cover the cost of a range of care for people.

Where once a person might travel to a single day centre and access various kinds of support, now they have to make multiple journeys to various places for help such as counselling, group therapy sessions, walking groups, art and music lessons, employment and computer skills classes, a hot meal.

Some centres even offered beds and a place to stay for a week or more if someone experienced a crisis and could not find help elsewhere. Several of these places have closed completely and those that remain have limited beds and limited time to offer people.

The colour of mental health

It is likely that a disproportionate number of the victims of these cuts will be black mental health patients, that is those defined as Black Asian or Minority Ethnic (BAME).

Marcel Vige has worked in the mental health sector, teaching, lobbying and campaigning for more than a decade. Now head of equalities at Mind, he runs programmes with local mental health support groups across the country. ‘Services that are focused specifically on meeting the needs of marginalised groups,’ he says. ‘Those are the ones that are often community based and they are the ones that are the first to feel the impact of any reduction in services delivered within local communities.’

Last year 50,408 people were sectioned – the highest number ever recorded according to research carried out by the Care Quality Commission, which also found that more black people than average are detained under the Mental Health Act and that they are more likely to have been sent there by a judge or police officer rather than their GP.

Statistics from a one-day census published in 2011 show that black people are more likely to be physically restrained on a psychiatric ward, given higher doses of medication, and less likely to be referred to counselling.

Paul Burstow, a Liberal Democrat MP, touched upon the issue in a Parliamentary debate last May. ‘It is concerning that services are being withdrawn where they involve providing peer support or reaching into harder-to-reach communities, particularly black and minority ethnic communities, which often get left behind and often are most prone to being subject to the most coercive parts of our mental health system.’

For decades these inequalities have been softened by community groups like the People’s Network and people like Neil, who understood the needs of black patients in ways the State failed to. Over time the Government recognised this too. From the mid-1990s there was some acknowledgement of mental health inequalities, some desire to do better. Funding followed. That has gone.

which, with changes to benefits, intensifies the pressure on vulnerable people.'

A sound mind

'I call myself the wounded healer,' says Devon, a tall thin musician with cropped hair peppered with grey. He's 54 years old. Behind his wire-framed glasses his expression is solemn as he describes the work of Sound Minds, the mental health charity and social enterprise he helped set up 20 years ago.

People suffering from depression, anxiety, schizophrenia, any sort of mental illness, they can leave that outside and relax here, says Devon. 'We have people in and out doing all sorts of things, making music, on the computers and stuff.'

Devon's openness and enthusiasm attracts people often marginalised because of their mental illness. Over the years he has helped people set up two reggae groups and a rock band. 'One fine day, come what may, you have got to rise up singing, no more tears,' goes one his own gentle, lulling reggae songs.

Devon lived with his grandmother in Jamaica until he was seven and then was sent to live with his parents in London. When his grandmother died in Jamaica a few years later, his grief overwhelmed him. Later, in his early twenties, Rastafarianism's music and spirituality gave Devon a sense of identity and security, and he found some relief from his grief.

This was short-lived. One day in 1982, Devon went to visit his mother. Unbeknown to Devon, his mother had called a doctor in anticipation of his visit. She was worried about him and disapproved of his 'lifestyle', the Rastafarianism and that he was squatting in Battersea as part of the rent revolt movement.

When he arrived at her house, the doctor was waiting and examined him. Another doctor turned up with the police in tow. 'I don't know why the police came, I hadn't done anything wrong.' He talks as though it happened just yesterday and not 32 years ago. 'They said come on we're taking you to the hospital. But there was nothing wrong with me.'

Devon stayed sectioned for six months, tranquilised every few days, physically restrained by police officers on the ward, subjected to electroconvulsive therapy and diagnosed as schizophrenic. 'There was nothing wrong with me before that,' he says.

Two years after he was first sectioned, he had a 'relapse', was sectioned again and heavily medicated. 'In the mental health system I lost my identity,' he says. 'I didn't feel like a black guy anymore. I felt like a white guy. I lost my cultural identity through the system.'

That echoes Lord Avebury, speaking in the House of Commons in 1982, the year Devon was first sectioned: '...It is said by the West Indian community that psychiatrists in the prisons, and indeed in the hospital service as a whole, are not properly trained in recognising the different cultures of ethnic minorities, and that as a result people may be wrongly diagnosed as suffering from mental illness when they talk, for instance, as the Rastafarians frequently do about God.'

Not long before then, a young black Rastafarian called Richard Campbell was convicted of attempted burglary. In prison he was diagnosed with schizophrenia, and medicated. He refused to eat. An officer found Richard dead in his cell on 31st March 1980. He was 19 years old. The official cause of death was dehydration. The inquest jury returned a verdict of self-neglect, expressing 'concern at the lack of specialist care facilities' in prison. The anger around Richard's death – it took some time to establish what happened to him while in custody – was a catalyst for the Brixton riots.

Some members of the psychiatric profession began to question the disproportionate occurrence of African Caribbean men compulsorily sectioned, detained on wards for long periods, diagnosed with psychosis and heavily medicated. Theories linking the experience of illnesses like psychosis to genetics abounded but have since been dismissed; studies based in the West Indies show that black people there do not suffer in such high numbers. This epidemic was something unique to the black population in the UK.

Among other fatalities: Michael Martin in 1984, Joseph Watts in 1988 and Orville Blackwood in 1991. These three black men had been diagnosed with schizophrenia. They were treated at Broadmoor psychiatric hospital. They died in custody after being restrained and injected with powerful anti-psychotic drugs. The inquiry report, into Orville Blackwood's death (subtitled *Big, Black and Dangerous?*) officially recognises what ordinary people had known for some time. It said:

'Over the last 20 years, studies have indicated that, if they come to the attention of the psychiatric services, black people are more likely to be removed by the police to a place of safety under section 136 of the Mental Health Act 1983; they are more likely to be detained in hospital under sections 2, 3 and 4 of the Mental Health Act 1983; they are more likely to be diagnosed as suffering from schizophrenia or another form of psychotic illness; they are more likely to be detained in the locked wards in psychiatric hospitals; they are more likely to receive higher doses of medication; they are less likely to receive non controlling treatments such as psychotherapy or counselling. In addition black mentally disordered offenders are more likely than their white counterparts to be remanded in custody for psychiatric reports; they are more likely to be in higher levels of security and for longer, and they are more likely to be referred from prison to regional secure units or special hospitals.'

That was 1993.

People began to listen to, albeit not endorse, the work of black mental health professionals like Suman Fenando, who questioned the Eurocentric outlook of western psychiatry and its impact on migrant populations and people of Asian and African descent living or born in Britain. The Royal College of Psychiatrists began discussing 'cultural problems' and the Mental Health Act Commission produced several reports on race and culture.

Patterns emerged. The black experience of the mental health sector mirrored what was happening elsewhere in society: secondary school expulsion figures, unemployment, poor housing, poverty and racism. West Indian migrants had experienced relentless and deliberate social discrimination in the decades after their mass arrival in Britain following World War Two. Their children inherited severely limited access to decent housing, education and work, and were constantly >>>

‘Practitioners who complained that psychiatrists were being accused of racism,

>>> stopped and searched by the police. British society, in the form of its institutions more than its individual citizens, had decided the blacks were dangerous and must be controlled.

Sidney did not arrive on the Windrush in 1948. He came from Zimbabwe in 1995. It took two years for his world to collapse.

Sidney worked for five years as a journalist in Zimbabwe. When his newspaper was shut down, he left the country to look for a more stable place to pursue his career and build a life for his family. Sidney wears a crisp ironed shirt and metal-rimmed glasses, has a clear professorial voice, with the occasional clipped tones of a Zimbabwean.

He looks down at his frothy coffee with a half smile and tells me about his hopes and ambitions on coming to Britain 15 years ago. The plan was to work, study and set up a home for his wife and children.

The reality was a £2 an hour job as a security guard six days a week. Sidney’s immigration status meant he had to pay his own way in further education. He enrolled on an access course (9am to 5pm) and kept the security job (7pm to 7am). Something had to give. In March 1997 he was sectioned.

Over a five-year period Sidney was sectioned 10 times and eventually diagnosed with psychosis. Sometimes a furious anger would erupt, once on the streets after being stopped by a police officer. Other times he was listless.

The tendency then of the mental health sector to treat him as a member of a homogenous group, a black man whose anger must be contained, frustrated Sidney. Only when he met a consultant who questioned his diagnosis and talked to him did Sidney begin to learn how to manage his illness. The consultant told him he was suffering from bipolar disorder and listened as he told her about his family, his ambitions and his disappointments. That was nine years ago and he hasn’t been sectioned since.

Simba is coming

Every person with a mental illness is an individual with singular circumstances, but as a group there are common experiences that unite, says Sidney. Frustration with the mental health sector united black people of all backgrounds. By the time the Orville Blackwood report in 1993 set out what they already knew, black families and carers were forming befriending groups. Community-based groups operated from psychiatric wards, old community centres, libraries, parks, trips to the seaside, wherever they could find a space to talk. As well as Sound Minds, Devon set up Cane rows and Plaits, a user-led ward-visiting group. These black-led organisations were part of a general ‘user-led’ revolution, by patients of all backgrounds, within the mental health service throughout the 1980s and 1990s.

Raj came to the movement after 20 years spent in and out of hospital. ‘I have had so many different diagnoses. I would go into crisis, not really knowing what was wrong, but just feeling like I didn’t fit, either in my family or the world around me,’ she says.

Raj’s father came to England from India in 1947, and her mother and siblings followed soon after. She was born in London. In between long months in hospital, she tried to ‘carry on a life’. She worked in a science lab.

After many years of revolving door admissions, and during a period of relative stability, Raj attended a conference about mental health. She met people who expressed concerns about psychiatry, human rights and the disempowering ways in which they were being treated within mental health services. They chimed with her experience.

Raj tentatively started to question her own treatment: ‘As far as they were concerned I was always better because my behaviour was better. But as far as I was concerned I was still quite confused and felt very out of it at times.’ The idea of challenging the system frightened and worried her: hadn’t these people saved her life?

Raj attended a few black mental health events in Brixton, south London in the 1990s. ‘There was a lot of stuff going on in the voluntary sector in those days. There was lots of activism around race and mental health and the over-representation of young black men in psychiatric hospitals. One of these was Orville Blackwood, a young black man who had died in Broadmoor as a result of being restrained. His mum was amazing. She was going around with this picture of her son and she was so passionate. I’d never been really political before, but now I began to see things through a different lens. It was a process for me because I was half a scaredy cat,’ says Raj. She also worried about putting herself ‘out there’.

Raj joined a mixed user-led group based primarily at a psychiatric hospital in London which, though feisty and active, never discussed race. ‘It was us not mentioning it, not the white people being racist, it was us censoring ourselves. We had too much to lose.’ The black members of the group didn’t want to ‘make waves’ by bringing up race. But as confidence grew, some of the black people in the group set up a separate black group. They made waves.

‘Lots of people were against us,’ says Raj. They were accused of being racist. ‘People were suspicious. Some black

"dismiss the legitimate concerns of the black community".'

people were saying it as well, "why do you want to separate yourselves?"'

The new group was called Share in Maudsley Black Action (Simba). They announced it by sticking up posters saying 'Simba is coming'. Raj grins. 'Nobody knew what it meant. Everybody was getting a bit freaked out.' Simba occupied a small room on the ground floor of the main building at the centre of the sprawling hospital. Raj laughs again, remembering the noise they made. 'If anybody had come in under normal circumstances they would have probably have sectioned us all.'

Most of Simba's members were African Caribbean men and there were a few women. 'I wrote a poem once about the rich diversity within that black group. Yet there was this commonality too. Partly because we had been through the system, but partly as well because we had all experienced racism.' Mental health rarely came up in their long, intense discussions. Instead they talked a 'hell of a lot about race', racism, identity, spirituality and their childhoods.

In and out of wards since her teenage years, Raj picked up on some of the inequalities within mental health care. She wanted to take her thinking a step further. She had been working on a theory for some time about the revolving door within mental health for black communities. 'You start out in an overtly racist society,' she says, 'which means you are more likely to live in poverty or be unemployed or suffer violence, factors that can influence poor mental health. Then you enter the mental health service, which is infused with the same implicit assumptions and prejudices of wider society, which drives you further into illness. If you do manage to get out of mental health services, you get out, go back into society, but now you go back into society and not only are you black but you have also got psychiatric diagnoses.'

'And it is not just race,' she adds, 'this idea applies to all forms of disadvantage; class, gender, disability . . . and so on.'

Things were gonna get better

A network of black-led user groups developed, spreading from London to cities like Manchester, Birmingham, Liverpool, Glasgow and Edinburgh. Black people within psychiatry, practice and academia, were rising to senior positions, and working within charities such as Mind. After Labour's 1997 election victory, hopes were high, black voices were not so much outsider voices, there was a new willingness to listen.

The Macpherson Report in 1999 into the murder of black teenager Stephen Lawrence signified an official commitment to ending a crude, brutal institutional racism that had dogged Britain's black population for decades.

The Macpherson Report defines institutional racism as 'the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness, and racist stereotyping which disadvantage minority ethnic people'.

An amendment to the Race Relations Act in 2000 charged all public authorities with a statutory duty to eliminate unlawful racial discrimination.

Soon afterwards, a group of psychiatrists, campaigners and patients contributed to *Inside Outside*, a report published by the Department of Health in 2003. The report, authored by Professor Sashidharan, then medical director of North Birmingham mental health trust, set out a framework for race equality within the mental health service.

The *Inside* in the title referred to the need for change within the mental health sector and offered measurable ways to effect that change. Outside was about engaging community groups, removing the stigma around mental health within black communities and empowering patients.

The professor consulted widely, seeking out the views of patients, community groups and campaigners from Britain's largest minority communities: Black and African-Caribbean, South Asian, Chinese and Irish.

Those involved believed *Inside Outside* was commissioned to form part of national policy on reforming mental health services. This never happened. Instead, Professor Sashidharan was replaced, and a new team brought in to write another report, which some described as a watered down version of *Inside Outside*.

One patient and mental health specialist who contributed to *Inside Outside* told me that the whole process felt 'incredibly political', and left everyone involved feeling pushed aside and frustrated. Another contributor told me that perhaps it was because the changes proposed would be too difficult to make. Both asked not to be named.

Around this time, an inquiry took place into the death of a healthy 38-year-old David 'Rocky' Bennett, an African Caribbean man diagnosed as schizophrenic. David Bennett died after being physically restrained. A team of nurses sat and lay across his body and held his head face down for 25 minutes at a psychiatric hospital in Norwich. The final inquiry report called for 'ministerial acknowledgment of the presence of institutional racism in the mental health services and a commitment to eliminate it.'

Two years later, in 2005, the Department for Health published its response to the David Bennett inquiry and a plan to revamp mental health services in light of the two *Inside Outside* reports. This was *Delivering Race Equality*, a five-year action plan to improve the care given to minorities with mental health needs.

For many it did not go far enough. Marcel Vige, now head of equality at Mind, says: 'The *Inside* bit had been stripped out and the *Outside* bit expanded. The main delivery component of *Delivering Race Equality* was around these 500 community development workers. We had put in place key performance indicators, all that kind of stuff, all of that was dropped.'

People welcomed the community focus, but they were disappointed that there wasn't equal emphasis on the role of the mental health trusts and other State bodies, who urgently needed to change the way they responded to black and other minorities.

Raj, who was also involved in the consultation for *Inside Outside*, says about *Delivering Race Equality*: 'It was set up in such a bad way that it was never going to change the world. They kept changing things at a senior level and there wasn't much consistency. They said, "We're going to employ 500 community development workers, but we won't give them any power. They are going to go to your black communities who are very difficult to engage with."'

However watered down the programme was, it was a rare opportunity, and so Raj, like others in the black community, threw themselves into making the best of it.

Over decades one common flaw in reports and investigations into the treatment of black people by the mental health sector was the lack of hard data.

The Delivering Race Equality programme promised an annual *Count Me In* census to record the number of inpatients across England and Wales on 31st March each year, noting the ethnicity of people detained under the Mental Health Act 1983 and the reasons they had got there.

The first census confirmed what black communities knew. Most minority groups, including white Irish people, experienced higher than average rates of detention compared to the white British population. The rates of compulsory detention among people of African descent outstripped all other groups. Black people were three times more likely to be referred to hospital and 44 per cent more likely to be detained when they got there. Referrals were more likely to come from the courts or the police for black men and this group was more likely to be kept in seclusion or physically restrained.

Many in the psychiatric profession felt that the conversation around *Delivering Race Equality* unfairly accused them of racism. Such unease inhibited progress. >>>

‘“Ethnic minority populations continue to have the worst experiences of mental

>>> Ian, who has worked for a range of NHS and charitable mental health bodies since the mid-1990s, says it took him two years to convince the NHS trust he worked for to let him implement race equality and culture awareness training.

‘They weren’t getting it right at all,’ he says. Most of the patients on the ward were black. The only black members of staff were cleaners or nurses. The entire board, the people with power who were responsible for commissioning, was white. ‘How could they know what was going on in the communities they were trying to serve?’

In November 2006 the architect and national director of *Delivering Race Equality*, Kamlesh Patel, resigned from his role. He told Community Care that race equality and mental health tended to drop off the agenda when ‘the money runs out’. *Delivering Race Equality* needed more robust central leadership with a ‘strong message’ sent out to health chiefs that there would be ‘repercussions’ if it were not delivered.

In 2007, in an article in *The Psychiatric Bulletin* co-authored with Chris Heginbotham, Patel wrote:

‘No one has yet provided an adequate explanation for the very high rates of admission and detention for some of these groups – notably for black African, black Caribbean and black Other (black British) people.’

Practitioners who complained that psychiatry and psychiatrists were being accused of racism, ‘misunderstand the concept of institutional racism and dismiss the legitimate concerns of the black community.’

Patel and Heginbotham wrote: ‘Either there is an epidemic of mental illness among certain black groups or there are seriously worrying practices that are leading to disproportionate levels of admission. Wherever the answer lies on the spectrum between the two extremes it is essential that we find out as a matter of urgency.’

Among the multiple reasons for the high rates of admission and detention of some black and minority ethnic groups, they said: ‘institutional racism in mental health and in wider public services is a contributory factor.’

In 2010, the Delivering Race Equality programme ended. The Government’s target of 500 development workers was never reached; some of those who were employed felt abandoned and powerless once the programme ended. The money for the programme had not been ring-fenced; stretched healthcare trusts may have spent it elsewhere. The *Count Me In* census stopped. The last set of statistics published in 2011 suggested that things were getting worse, particularly for young men with mixed ethnicity.

Big, black and dangerous?

There are few mentions of race in the current Government’s mental health strategy documents. Instead it has been submerged under the general heading ‘equalities’. Within the black community, there are wide variations of experience and concern including high rates of self-harm among Asian women and high occurrences of African Caribbean men sectioned by the police. Lumping all such variances together under the general heading ‘equalities’ increases the risk of mental health providers ignoring them. It is much cheaper to focus on meeting a general equalities duty, than commission work to investigate and improve services for specific groups. People are marginalised in different ways and each group, whether gender, class or race, needs tailored support.

At a London psychiatric hospital ward a member of staff says most of the people brought in by the police are black. On another London ward, 12 out of 15 patients are black and diagnosed with schizophrenia, despite a marked difference in their behaviour.

Sean Rigg was a physically healthy 40-year-old diagnosed with schizophrenia who died of a heart attack in Brixton police station after being restrained by officers in 2008. In 2010, Olaseni Lewis, a 23-year-old man, died after being physically restrained three times over the course of 45 minutes at a psychiatric hospital in London. The stereotype big, black and dangerous persists.

‘Black people are considered more dangerous and there is more fear about them,’ says Matilda MacAttram, a human rights campaigner who managed in December 2013 to convince politicians to debate black deaths in custody.

Matilda MacAttram set up Black Mental Health UK, a human rights campaign group, in 2007 because after 30 years of discussion she wanted action.

A tall, elegant woman, Matilda speaks softly but firmly: ‘This is not a BME issue. This is an issue that disproportionately only affects one group. Three generations from one community have been lost in this system. Detention rates have fallen over the last five years from 2005 to 2010 nationally. But for one group they have doubled – it is not a BME issue.’

‘It doesn’t matter what you call it when you can see consistent inequalities of this nature. Not only that, [there are] the sort of outcomes

health," reported the Care Quality Commission in June 2014.'

that make the Sean Rigg experience almost the norm. I don't know what other adjectives you could use. Any system that can take the life of a physically healthy person with impunity and then there is no accountability, what do you call that?'

Matilda MacAttram lobbies policymakers, collects data on lives lost in State custody, helps black families pursue justice. Her vision for change? 'Compassion, decency, justice.'

The wounded healer

'Ethnic minority populations continue to have the worst experiences of mental health,' reported the Care Quality Commission in June 2014.

The community groups – made up of churches, family, friends, activists – that have always sprung up to meet needs not filled by the State, carry on, but they have more struggles to confront than in the early days of New Labour.

Organisations that once battled trusts for better care for ethnic minorities, have suffered funding cuts. Some have gone under.

Many of the individuals who campaign have mental illnesses themselves. They strive to manage employment around their health, claiming benefits when they need to. Welfare 'reform' has brought them fresh adversity and new battles to fight.

Raj has decided to take a step back. 'I think I have just got burnt out really,' she says. Sometimes it is just too depressing to go back to the wards and see nothing has changed after so long.

Once Sidney got care and treatment that helped him, he turned to help others. He works with refugees and African Caribbean men. He started peer support groups to battle stigma within black communities. He helps former patients get basic housing and finance advice, and trains school teachers, police officers and local university staff on how to deal with mentally ill people.

Funding for one peer group he set up ended when the *Delivering Race Equality* stopped. Spending money on such groups is no longer a priority for NHS trusts cutting budgets and restructuring services.

Devon uses his experience to help other people. He visits patients on the ward that once held him prisoner. Sound Minds is one of the few self-help mental health groups left in South London. Many have closed or are winding down for lack of funding.

Over decades Devon has developed ways to manage his 'condition' and takes anti-psychotic pills every day.

Devon sits with his hands interlaced and gazes steadily ahead, serious, but with occasional glimpses of that surprising smile. There is no trace of bitterness or anger; instead his reflections about the faults of a system that may have misdiagnosed him and certainly disempowered him are mixed up with pride and positivity about how he has used this experience. To form several reggae bands; to set up two mental health charities; to visit the psychiatric ward of his local hospital offering advocacy, kindness and support.

The wounded healer. He no longer looks like a Rastafarian, but, 'I kept the music', he says, 'Thank god for that.'

Rebecca Omonira is a freelance journalist. The illustrations are by Patrick Koduah. This is an edited version of an article which was first published by openDemocracy's *Shine A Light* project.

Colombia

In the first of three articles about Colombia, **Daniel Kovalik** looks at how the United States of America maintains its 'false-positive' nightmare.

Peasant protestors in Catatumbo, Colombia near the Venezuelan border.

Pictures: Daniel Kovalik

The United States, Colombia and the spread of the death squad state

Colombia continues to be ground zero for the US's crimes against Latin America, and its continued quest to subjugate the region. Several recent events, virtually uncovered in the mainstream press, underscore this reality.

First, Human Rights Watch (HRW) released a report on 20th March 2014 detailing the grisly practices of paramilitary death squads in the port town of Buenaventura. These practices by the paramilitaries, which act with impunity and with the tacit support of the local police, include disappearances of hundreds of civilians; forced displacement; and the dismemberment of individuals, while they are still alive, in local 'chop houses'. That the port town of Buenaventura was to be the model city of the US-Colombia Free Trade Agreement is instructive as to what the wages of free trade truly are. Jose Vivanco of HRW called Buenaventura 'the scandal' of Colombia. Sadly, it is not Colombia's only one.

Thus, during a weekend in early May 2014, the VI division of the Colombian army entered the peasant town of Alto Amarradero, Ipiales in the middle of the night, and, without warrant and in cold blood, gunned down four civilians, including a 15-year old boy. Those killed were Deivi López Ortega, José Antonio Acanamejoy, Brayan Yatacue Secue and José Yiner Esterilla – all members of the Fensuagro agricultural union.

The army then displayed the bodies of those murdered for all to see, and falsely claimed that they were the bodies of guerrillas killed in combat.

These are the latest victims of the ongoing 'false positive' phenomenon in which nearly 6,000 civilians have been killed by the Colombian military and then falsely passed off as guerrillas in order to justify the continued counterinsurgency programme in Colombia and the US aid that funds it. As my Colombian friend, Father Francisco de Roux, SJ, stated at a peace conference in Washington DC, 'if these "false positive" killings had happened anywhere else, they would have been a scandal!' However, having happened in Colombia, the US's closest ally in the Western hemisphere, the killings have elicited a collective yawn from the media and policy-makers.

A damning report released by the Fellowship of Reconciliation in May 2014 – a report which, in a just world, would have been covered on the front page of *The New York Times* – demonstrates how there is a direct correlation between US military funding and training, particularly at the School of the Americas (otherwise known as Whinsec) and the incidence of human rights abuses, including 'false positive' killings.

As to the latter issue, the report concluded that '[o]f the 25 Colombian Whinsec instructors and graduates for which any subsequent information was available, 12 of them – 48 per cent – had either been charged with a serious crime or commanded units whose members had reportedly committed multiple extrajudicial killings.' Moreover, '[s]ome of the officers with the largest number of civilian killings committed under their command (Generals Lasprilla, Rodriguez Clavijo, and Montoya, and Colonel Mejia) received significantly more US training on average than other officers' during the high water mark of the 'false positive' scandal.

How revealing, then, that, as reported by the Washington Office on Latin America (WOLA), the head of the US's Southern Command, General John Kelly, recently explained to a Congressional hearing that the US is utilising Colombian military personnel to do military training in other Latin American countries in order to get around human rights restrictions which prevent the US from doing the training directly.

As Kelly explained, in a moment of candour:'The beauty of having a Colombia – they're such good partners, particularly in the military realm, they're such good partners with us. When we ask them to go somewhere else and train the Mexicans, the Hondurans, the Guatemalans, the Panamanians, they will do it almost without asking. And they'll do it on their own. They're so appreciative of what we did for them. And what we did for them was, really, to encourage them for 20 years and they've done such a magnificent job. . . . But that's why it's important for them to go, because I'm – at least on the military side – restricted from working with some of these countries because of limitations that are, that are really based on past sins. And I'll let it go at that.'

In other words, the US is exporting the abysmal practices of the Colombian military – practices the US has trained them in to begin with – throughout the region. Sadly, the silence in response to this nightmare reality is deafening.

Daniel Kovalik is a labour and human rights lawyer and teaches International Human Rights at the University of Pittsburgh School of Law. This article first appeared on the Counterpunch website and is reprinted here with the author's kind permission.

Colombia

Nestlé's responsibility for the murder of Colombian Nestlé worker and Sinaltrainal trade unionist Luciano Romero remains in the dark. **Annelen Micus** reports....

Swiss judiciary declines justice

On 21st July 2014, the Swiss Federal Supreme Court dismissed the appeal of the widow of assassinated Colombian Sinaltrainal trade unionist and Nestlé-worker, Luciano Romero (pictured right). She had appealed the Cantonal Court's decision to close an investigation into Nestlé's responsibility for the murder of her husband. On 5th March 2012, the European Centre for Constitutional and Human Rights (ECCHR) and the Colombian trade union Sinaltrainal had submitted a criminal complaint in Switzerland against Nestlé and five of its top managers. The complaint accused the company and its managers of contributing through negligence to the death of Luciano Romero. It was argued that the accused had knowledge of the threats made against Romero, but failed in the duty to use the resources at their disposal to prevent his murder.

The Federal Supreme Court upheld the legal reasoning of the prosecutor's office and the Cantonal Court that an investigation into the murder was statute-barred. The Supreme Court thereby departed from the Swiss Federal Council's interpretation and copious literature on the subject, that corporate criminal responsibility presents a continuous offence which, hence, would not be statute-barred in the present case. It thus brought the proceedings to an end on formal grounds.

As a result, the real issue of Nestlé's responsibility for the assassination of one of its workers remains unexamined. In light of the prevailing impunity in Colombia, Romero's widow and the trade union Sinaltrainal had hoped that the responsibilities of the transnational company would have been seriously investigated in Switzerland and that justice would have been delivered. However, the Supreme Court's decision exposes the necessity of introducing effective mechanisms in order to establish the responsibility of transnational companies, such as Nestlé, for human rights violations committed abroad.

The Federal Supreme Court's restrictive interpretation shows that it is imperative to reform the statute of limitations with regard to corporate liability. Otherwise, companies with complex organisational structures will profit from long investigations – as has been demonstrated by Luciano Romero's case. The result of the case illustrates that the Swiss justice system is not equipped to provide justice for the victims of grave human rights violations committed through corporations.

In view of the continuing attacks on trade unionists in Colombia, it would have been important to clarify the responsibility of a company in relation to its subsidiary companies. In conflict zones such as Colombia, Nestlé has a duty to guarantee the security of its workers and should not aggravate the dangerous situation faced by trade unionists. These duties follow from its guarantor and due diligence obligations that have been elaborated in international guidelines established by the United Nations and the OECD with respect to corporate human rights obligations. However, we see that the reality in Colombia is different, and trade unionists constantly suffer death threats and attacks. To date 15 Sinaltrainal trade unionists who had worked for Nestlé have been murdered. Most recently, in November 2013, a Nestlé worker was shot in Bugalagrande, Colombia, during a hunger strike that sought to promote respect for workers' rights and the freedom of the Sinaltrainal trade union. In June 2014, there was an attempted assassination on the vice-president of the Bugalagrande section of the Sinaltrainal trade union. As in the case of Luciano Romero, the latest murder in November 2013 was also preceded by the Colombian management's stigmatisation of trade unionists, which Nestlé's Swiss headquarters failed to prevent. An adequate investigation in Switzerland might have prevented the continued repression of trade union organisation in Colombia.

Background and facts of the case

Luciano Romero was murdered by paramilitaries on 10th September 2005 in Valledupar in North Eastern Colombia. His body was found with 50 stab wounds. Before his death, Romero had worked for the Nestlé's Colombian subsidiary Cicolac for many years, and was a leader for the Colombian food industry's trade union Sinaltrainal. Colombia continues to be plagued by an armed conflict in which trade unionists and other groups are subject to systematic persecution. In the past three decades approximately 3,000 trade unionists have been assassinated. Luciano Romero had received frequent death threats after the local Nestlé management falsely branded him a guerrilla fighter. Cicolac allegedly did business with milk producers that had close ties with the paramilitaries or belonged to paramilitary groups themselves – a fact which in the meantime has been confirmed by Colombian courts. The former paramilitary commander Salvatore Mancuso has given evidence that Cicolac made payments to his units. The management at the Swiss company was continuously informed about the wrongdoing of its representatives in Colombia and about the repression and the threats against trade unionists.

The direct perpetrators of Romero's murder were convicted in Colombia in 2006 and 2007. Such convictions are rare in Colombia, a country with the world's highest rate of murders and intimidation of trade unionists. At the close of the proceedings in 2007, the Colombian court had called for a criminal investigation into the role of Nestlé's subsidiary Cicolac. However, no such investigation was carried out. Despite masses of indications of criminal liability, no prosecutor in Colombia or in Switzerland initiated an investigation. Colombian lawyers and trade unionists together with ECCHR took up the work on behalf of Luciano Romero's family and began investigating the circumstances of his murder.

On 5th March 2012, ECCHR and Sinaltrainal submitted a criminal complaint in Switzerland against Nestlé and five of its top managers, accusing them of contributing through negligence to the death of Luciano Romero. The criminal complaint set a legal precedent as it marked the first attempt to hold a Swiss company liable in Switzerland for a crime committed abroad. In 2003, article 102 was added to the Swiss Criminal Code that established the criminal liability of companies; however, the provision has rarely been applied. For the first time in Switzerland, this case posed the question of corporate criminal responsibility in cases of human rights violations.

The proceedings in Switzerland

The proceedings demonstrate that to date the Swiss judiciary has been unwilling to follow up on substantiated criminal accusations against corporations. Furthermore, Swiss law effectively makes it impossible for non-European victims of human rights violations committed by Swiss firms to enforce their rights in court.

On 1st May 2013, 14 months after the complaint was submitted, the office of public prosecution in the Swiss Canton of Waadt declined to open an investigation into the liability of Nestlé and its managers. No investigations were carried out since the criminal complaint was lodged in the German speaking Swiss canton of Zug. Instead, the case was passed over to authorities in the canton of Waadt, and rather than promptly initiating an investigation, the prosecution made use of various formalities to delay proceedings until they could declare that the matter had become statute-barred. The victim's widow, represented by Zurich lawyers Marcel Bosonnet and Florian Wick, had lodged her own criminal complaint and subsequently appealed against the decision of the Swiss authorities. This appeal was dismissed by the Cantonal Court in December 2013.

A new appeal was lodged against the Cantonal Court's decision before the Swiss Federal Supreme Court based on the court's failure to recognise that the statute of limitations does not begin to run with the commission of the crime itself. The corporation failed to take any action to remedy organisational deficiencies within the firm. Nestlé's liability in this case arises from these organisational deficiencies, and as a result the case cannot yet be statute-barred. In its decision the Cantonal Court failed to take into consideration the recent position paper of the Swiss Federal Council that supports the legal view put forward by ECCHR and Swiss lawyers Bosonnet and Wick.

In its decision of 21st July 2014, the Swiss Federal Supreme Court dismissed the Swiss widow's appeal against the closing of the investigation into Romero's murder. The Federal Supreme Court upheld the prosecutor's office and the Cantonal Court's finding that the investigation was statute-barred, and departed from the Federal Council's interpretation that corporate responsibility is a continuing offence and therefore would not have been statute-barred in the present case. As a consequence, the real issue of Nestlé's responsibility for the assassination of one of its workers remains unexamined.

At least the Federal Supreme Court clearly defined the requirements for corporations. It stated that companies must provide inter alia 'a clear description and separation of competencies and responsibilities' as well >>>

Colombia

One of the difficult realities of living in a country like Colombia is revealed by **Camilo Insuasty-Obando** as he recounts visiting his mother, a leading political campaigner, in prison...

One of many Saturdays in prison

>>> as 'concrete and assigned work plans within the company'. As a result of the Supreme Court's dismissal of the appeal, whether Nestlé complied with this duty still remains an open question. The decision goes against Switzerland's international obligations, which establish a duty to investigate facts of this kind and set clear standards for corporate duties with regard to human rights risk management.

Conclusion

ECCHR, the Colombian trade union, Sinaltrainal, as well as the Swiss and Colombian lawyers of the widow are continuing to assess further legal steps such as a complaint to the European Court of Human Rights. The case of Luciano Romero was submitted to the International Criminal Court in The Hague as one example of the systematic persecution of trade unionists in Colombia. In Colombian criminal proceedings, the murder was qualified as a crime against humanity.

The murder of another Nestlé employee and trade unionist in Colombia in November 2013 demonstrates that nothing has changed when it comes to Nestlé's treatment of its trade unionists. Contrary to claims made at conferences and on the company's website, Nestlé continues to put its employees and trade unionists in situations of extreme danger. Once again, the latest murder of a trade unionist came after the victim was stigmatised by Nestlé's Colombian management.

The Federal Supreme Court's restrictive interpretation makes a reform of the statute of limitations regarding corporate liability necessary. Otherwise, as this case demonstrated, companies with complex organisational structures will be granted impunity through delayed investigations. The result of the case illustrates that the Swiss justice system is not equipped to provide justice for the victims of grave human rights violations committed through corporations. Therefore, laws need to be reformed in order to facilitate such proceedings in the future and to grant victims of corporate human rights abuses access to justice.

Annelen Micus is a Legal Adviser at the European Centre for Constitutional and Human Rights. More information about the case is available at www.ecchr.de/nestle-518.html.

Camilo Insuasty-Obando is an independent journalist and the son of Colombian political prisoner Liliany Obando. When he wrote this article, Liliany had been released from her prison cell at Buen Pastor Women's prison and was finishing the remaining months of her sentence under house arrest. On 5th August 2014, Liliany was taken into custody again but has since returned to live at her home in Bogotá under house arrest. Her sentence is for the vague charge of 'rebellion', a charge that has been used to imprison thousands of unionists, student activists and human rights defenders. For updates concerning Liliany's case, please visit the websites of Justice for Colombia or the International Network in Solidarity with the Political Prisoners.

I do not remember the exact day that I entered a prison, but I do remember with precision how that day transpired. That day would be the departure point from where we would begin, along with my family, to reach our freedom, our freedom, as only one of us was behind bars but we all would suffer the two faces of the prison, the outside and the inside.

That would be the first of many Saturdays where entering the prison to visit a family member would be more than a right, a real achievement. Being a family member of an inmate already puts you directly in the game that Inpec (National Institute of Prisons and Penitentiaries) wants to play – officers in blue uniforms that you have only seen on television. From this day forward we would have to learn to sort through every condition, every attack and every humiliation on the part of the prison guards. In reality the prison was their empire. They were the emperors and we, the enemy.

In the interminable queues that extend dozens of metres from the front gate of the prison, one encounters people, whether in inclement sun or rain, who have come from all parts of the city and some from other regions, people of different social classes, with different ways of seeing the world. It appeared that some live comfortable lives while others carry marks and scars that reveal their daily struggle for survival. An atmosphere of camaraderie and solidarity could be perceived in the entrance line such that differences between people do not then matter.

The only objective, as much for the rich as the poor, was to be able to enter. But as the corruption in this country is infused throughout all social spheres and spaces, the prison is not beyond that and the persons with the greater social status and economic resources clearly have privileges such as entering with a large quantity of food and utensils which surpass the limit of what is permitted to others. They enter more rapidly and without having to wait in line.

This day would be the first of many in which I would see how people were required to throw out the food that they brought for their family members. I would see how the guards were impeding the entry of persons coming from Antioquia, Valle, Tolima, Huila

and many other faraway regions, who after a long driven journey are told that among other things, they were not registered, that they are missing a stamp, that they were not on the visitor list. It was one excuse after another that literally left people perplexed by sadness and unable to see their family members.

In order to visit a family member or friend in the prison first you must register in the Inpec system in order to receive your entrance number that is assigned in the order in which one arrives. The numbers 500, 600, 650 were the numbers for someone such as myself arriving outside the prison at 9:00 or 9:30am. Someone informed me that many of those who were before me had arrived as early as 4am. The lines move slowly and after 11am, if you had not entered, you would have to try again the following Saturday.

It is interesting to see how in Colombia, despite the grand difficulties and the drastic repression, its inhabitants still hold to the firm desire to get ahead. Thus the prison also represents an opportunity to make some money with a number of persons working outside the prison, selling food, taking photographs for Inpec to look over, inspecting belts, jackets and other articles that are not permitted. After some time, Inpec dislodged these persons from the immediate vicinity of the prison.

Once inside, the drama intensified. The treatment was each time more hostile on the part of the guard. The motto that was at the entrance, 'Your human dignity and mine are inviolable' remained written only on the wall. For Inpec you were an intruder and they would look for whatever excuse in order to demoralise you. On two occasions they tried to oblige me to take off my clothes without justification and I know of cases of women who had to arbitrarily undress. Many times they obliged us to remove and throw away food or to eat what was 'prohibited'. The articles not permitted changed every week.

On other occasions, they falsely accused me of skipping the line with the police dogs, directing shouts and intimidating statements in my direction. The inspections were intense and those who performed them at the time harassed people with questions and mistreatment. The wait was eternal and finally after three or four hours you were before the last door that separates the prison within the prison. Behind that door there are mothers, sisters, wives, daughters, friends, the great majority of whom are considered only 'delinquents', an often overlooked fact.

The atmosphere is always very sharp in the interior of the prison patio. You feel asphyxiated and there are very few reasons to smile in a place where the passage of time is exaggeratedly slow.

You want to leave. The happiness of seeing your loved one is countered by the stress endured during the day. If a few hours seem interminable within the prison, imagining four, five or even 30 or 40 years is very difficult. It is hard to put oneself in those shoes and accept that crude reality. The visiting time is short and unnerving. The conditions in which prisoners are living and in which they continue to live, leave much to be desired.

Although the Buen Pastor women's prison does not represent the extreme conditions of the men's prisons and other jails, it does suffer from overcrowding. The cells in which two or more prisoners must sleep and live are of an extremely reduced space. The health service is terrible, if practically non-existent. The spaces for libraries, recreation, hygiene and other facilities are quite precarious.

The visits ended too quickly. You are left wanting to be there a little longer, an hour or two, but Inpec very rapidly emptied the patio and there they were, the last moments, those that marked the close of the day. On leaving there were lines, equal to those when you entered, but the guards were not so rigid at this hour of the day, although things still moved slowly. Behind, there is only a closed door and behind it there are many truncated lives, struggling, trying to rise above being forgotten and enclosed, trying, just trying to carry on a 'normal life'.

Once outside the prison again, you breathe for a moment before beginning your walk. The world continues as usual, the cars circulate, the families pass by, and nothing stops. Everything seems to be relatively normal like always. For the outside, the prison does not exist. You pass and look from afar. It is as if hundreds of persons have been left to their own luck to die.

From this day forward I would see the prison through other eyes. This would be the first of many Saturdays that I would visit the Buen Pastor women's prison, since the cruelties, the injustice and the persecution that are so frequent in Colombia had touched our door, snatching away our mother, Liliany Obando, on an afternoon in August 2008. The cost of her commitment to achieving better and more equitable living conditions for many Colombians had been the targeting of her by the State, the indifference of many who were considered close or friends, and lastly, imprisonment.

As family, and as for many other families, we live together with the incarceration of our family members. Those who are outside live with the same intensity as those who are inside. When one of your loved ones is deprived of liberty, the nuclear family changes drastically and in a country where the great number of homes is composed of mothers who are heads of households, it becomes really difficult to overcome everyday life and survive practically when it is the mother who is behind bars.

The years have passed by, drenching us with the difficult realities that create a leviathan, indolent and repressive State. The adverse conditions also bring out positive aspects such as solidarity within the same family, the taking on of conscience, the struggle for justice, of being reflective before the difficulties of thousands of Colombians who are deprived of their liberty and their families.

If they were looking through incarceration to generate fear in Colombian families, such an approach has had a contrary effect. It has equipped us with courage and fortitude and every weekend, at the outskirts of all the prisons in Colombia, the families, standing and waiting with enviable composure and dignity.

This is an edited version of an article that was first published on 15th August 2014 on the Alliance for Global Justice website.

New York's toxic justi

A longstanding legal battle between indigenous Ecuadorians and the megalithic US corporation Chevron has decisively tipped in favour of the oil giant and other global resource extraction firms. On 7th March 2014, Washington law firm Patton Boggs agreed to pay $15 million USD to Chevron in order to settle an unprecedented fraud charge levelled by the corporation in a New York federal court in 2011. This settlement is the latest chapter in a struggle that has pitted Chevron against a group of residents of Lago Agrio in the Ecuadorian Amazon and their legal team, led by New York lawyer Steven Donziger. Patton Boggs' initial decision to represent the Ecuadorians came as a surprise, since the Washington law firm was known as a favourite of right-wing dictatorships during the Central American civil wars of the 1980s. Now, Patton Boggs has become the latest of several members of Donziger's legal team to distance themselves from the case under intense pressure from Chevron. While the settlement precludes Patton Boggs from any further responsibility, Donziger has stated he will continue to fight the fraud charge, which came in response to a landmark 2011 ruling against Chevron in an Ecuadorian provincial court.

The residents of Lago Agrio, who call themselves the *afectados* (the affected ones), filed suit in 1993 on the allegation that Texaco had dumped 18 billion gallons of toxic waste in the Ecuadorian Amazon during its 23 years of operation there, leading to acute environmental devastation, health problems, and the resultant loss of livelihoods on a vast scale. The law suit outlived Texaco and continued after Chevron acquired the company in 2001. After nearly two decades of proceedings, Ecuadorian judge Nicolas Zambrano awarded the plaintiffs $18 billion USD in damages, which was later reduced to $9.5 billion USD on appeal. The ruling was hailed as a historic achievement by indigenous peoples in the struggle against exploitation of their land holdings at the hands of transnational corporations (TNCs). The plaintiffs' victory marked the first time a TNC was held responsible for damages to indigenous peoples in a foreign court.

ce for the Ecuadorian oilfields

However, Chevron countered with an equally bold response: suing the prosecutors in US federal court. Despite issues of murky jurisdiction and grave implications for international law, their ploy eventually worked. In March 2014, Manhattan federal judge Lewis Kaplan ruled that the judgment against Chevron in an Ecuadorian provincial court was tainted by fraud and bribery on the part of Donziger and his team. While the audacious victory certainly spoke to the acumen of Chevron's legal team, as well as the company's vast financial resources, it represents a grave loss for the afectados and the prospects of other communities determined to stand up to rampant corporate exploitation.

Since Chevron no longer has a presence in Ecuador, the plaintiffs have been forced to open cases in Argentina, Brazil and Canada in order to claim Chevron assets as payment. Some legal analysts suggest that the New York ruling and later settlement will hurt their prospects in these cases, although Donziger and his team downplay the impact. Additionally, Chevron's vicious retaliations can surely be regarded as a way to dissuade US law firms from taking on such cases in the future. Patton Boggs' settlement and subsequent distancing from the rest of Donziger's team suggest that this tactic has largely succeeded. Judge Kaplan did not detail whether Patton Boggs itself had engaged in racketeering, but it seems that the firm has decided to cut its losses and avoid any further risk stemming from the case. Donziger referred to Patton Boggs as 'the latest victim of Chevron's campaign of intimidation.'

The legal intricacies of each party's accusations are beyond the scope of this article. However, the evidence seems to suggest that some level of attempted bribery and unethical actions likely occurred on both sides, a fact that escapes most of the reports on the case. Moreover, whether or not Donziger's legal team (or Chevron's) engaged in attempted bribery or ghostwriting, the ruling essentially stands as a US judgment of the Ecuadorian court system. Judge Kaplan himself characterised the case as such, referring to it as 'an independent action for relief from an allegedly fraudulent judgment'. The New York federal court is therefore complicit in the violation of Ecuador's legal sovereignty.

The Chevron case once promised a new path for indigenous voices to be heard on the global stage. However, thanks to corporate-friendly US courts, the precedent set by Judge Kaplan gave TNCs a powerful tool for retaliation. In 2008, a Chevron spokesperson said, 'We're going to fight this until Hell freezes over — and then we'll fight it out on the ice.' For now, this vow seems to have produced successful results.

Alexander J. Preiss is a Research Associate at the Council on Hemispheric Affairs based in Washington DC.

System chose cover up over justice

The Killing of Blair Peach
By David Renton
Published by Defend the Right to Protest (2014)

David Renton's pamphlet on the inquiry into Blair Peach's death is an exposé of the efforts taken to cover up police actions by the very institutions responsible for ensuring accountability and justice. Written in a clear and accessible style, the pamphlet is aimed at readers outside the legal profession as well as those engaged in the justice system. It is highly recommended to anyone seeking to understand how inquests can go wrong. It is a compelling read which still bears relevance today.

In 1979, tensions were running high in London between the National Front and minority communities actively supported by the left. On 13th April 1979, at a protest in Southall against a National Front meeting, these simmering tensions came to the fore. During the course of the protest a popular teacher, Blair Peach, was killed. Witnesses at the time said they saw a police officer strike him in the head.

In the immediate aftermath of Peach's killing, Commander John Cass, chief of the Metropolitan Police's Complaints Investigation Bureau, led an internal investigation into his death and produced the Cass Report on his findings. This report was never made public. The inquest after Peach's death returned a verdict of death by misadventure. Following the death of Ian Tomlinson during a G20 protest, Peach's family repeated a request for the Cass report into his death to be made public.

The report, although expressing bias against Blair Peach as a member of the 'rebellious crowd', found that he was most likely to have been killed by one of six police officers and identified one as a principal suspect. This report was available to the police's counsel and coroner at the time of the inquest but was not shared with any of the other parties to the proceedings. Crucially, the jury were not made aware of the report before making their findings.

Blair Peach: killed after a police officer struck him on the head.

This clear and concise booklet sets out all the evidence available at the time of the inquest and explores the prejudices of the involved parties to avoid placing responsibility on any one police officer. Written in an impartial manner, David Renton sets the scene at every stage, leaving no room for doubt as to the abject failings of the police and the coroner in carrying out their duties.

There were several steps during the inquest which appeared to be attempts to frustrate the proceedings. Firstly, there was the coroner's initial refusal to accept a jury, a decision later overturned by the Court of Appeal. Secondly, there was the coroner's refusal to disclose the Cass Report to Peach's family and the jury. Thirdly, there were the coroner's misleading directions to the jury including directing them to consider the possibility that another protester had struck Peach despite there being no witness testimony or other evidence suggesting this possibility. The coroner also suggested that police involvement in Peach's death was an extreme theory. At this point, ten witnesses had already testified before the jury that they had seen a police officer striking Peach shortly before his death.

Throughout the pamphlet Renton takes pains to highlight contributing factors which added to this gross miscarriage of justice, from the excessive use of police force at the protest where 2,000 police officers were deployed to the event to protect 100 National Front members, through the misdirection and bias of the coroner, to police efforts to frustrate the inquiry.

While damning of a miscarriage of justice, the pamphlet also bears great immediate importance. Introductory statements by both Susan Matthews, the mother of an injured student protester, and Søren Goard, a member of the Anti-Fascist Five acquitted in April 2014, remind the reader of the continuing frustrations protesters experience in encounters with the police and the continuing relevance of the inquest into Blair Peach's death. Head injuries were frequently inflicted by police on activists during protests in the 1970s. Forty years later during the 2010 student protests, head injuries were still common. Alfie Meadows, a student protester who suffered a head injury from a police assault in 2010, was charged with taking part in violent disorder, a case that carried echoes of that of Blair Peach.

This pamphlet demonstrates how police accountability can be hidden from public view and is evidence not of individual police failings but rather of a systematic effort to protect the police at the expense of justice. David Renton establishes a strong case for a new inquest into Blair Peach's death but also illuminates how easily justice can be undermined.

Shanthi Sivakumaran

Much to learn from courageous youngsters

Young Rebels – The Story of the Southall Youth Movement
digital:works (2014)

'Paki bashing' is a truly offensive term but one which, thankfully, will be unfamiliar to many younger readers of *Socialist Lawyer*. To those of us who grew up in the 1960s and 1970s, it is a grim reminder of an era of ignorant and gratuitous violence perpetrated by racist white gangs.

Emboldened by the growth of the fascist National Front, these thugs would trail local areas launching unprovoked attacks upon Asian youth. They were spurred on in their criminal pursuits by the apathy and institutional racism of the police and the belief that their victims were too weak or cowardly to resist.

Young Rebels is a documentary film that tells the story of how the racists met their match in Southall, West London. Using archive footage, photographs and interviews with leading participants, the film focuses on three key events that led to establishment and growth of the Southall Youth Movement (SYM).

By the mid 1970s, there was a generation of Asian youth who had been brought up in Britain. Dispersed by the local authority in schools across the borough to prevent them from being concentrated in one area, they were forced to run the gauntlet of the racists. They were habitually chased, beaten and spat at. Their meals were spat into and they were excluded from extra curricular activities. The police did little to protect them and, indeed, allowed the racists to mobilise with impunity.

The murder of Gurdeep Chagger opposite the Dominion Cinema in Featherstone Road on 4th June 1976 proved to be the tipping point. A group of Asian youth decided that they were no longer prepared to listen to their parents' impassioned pleas to ignore the provocation and turn the other cheek. Nor were they willing to heed the call of 'community elders' to collaborate with the police. Instead they resolved to fight back. This culminated in the establishment of the Southall Youth Movement with the following aims:

- To give voice to the aspirations and concerns of young people in Southall;
- To fight and challenge racial discrimination;
- To demand justice and equality;
- To ensure that Asian young people speak for and on behalf of themselves.

Three years after Gurdeep Chagger's murder, the National Front applied to hold an election meeting at Southall Town Hall on St George's Day, 23rd April 1979. They were granted permission by Ealing Council despite the fact that they had no members or support in the area. The rally was intended as a typical naked act of aggression and intimidation. Nevertheless the Metropolitan Police mobilised over 2,000 officers to facilitate the fascists. The SYM played a leading role alongside the Anti-Nazi League (ANL) in organising a mass demonstration to oppose the National Front. This was the occasion when 33-year-old schoolteacher Blair Peach, an ANL member, was killed by a blow to the head from an officer in the Metropolitan Police Special Patrol Group. SYM was subsequently central to the campaign alongside the ANL and progressive lawyers to defend the 342 people charged with offences in connection with the events of that day.

The third major event featured in *Young Rebels* is the burning of the Hambrough Tavern pub in July 1981. Once again fascists >>>

>>> were allowed to descend on the area, this time to attend a gig by the '4 Skins' at the aforementioned pub. The police failed to heed the calls for the event to be stopped, so the youth took matters into their own hands with bricks and petrol bombs.

Suresh Grover was one of those young rebels and as the director of the Monitoring Group is still a leading figure in the anti-racist movement. He argues that SYM was not like the USA-based Black Panther Party which had a 10-point political programme that supporters were asked to sign up to. Instead, he argues that SYM's aims were simply to challenge the racism of violent gangs and the police.

It is true that SYM had no broad political agenda, but it did share with the Panthers a commitment to community activism. For example, its members set up a community centre and established a youth club. They organised history classes and provided space for people to learn music and set up football teams which competed with some success in the local leagues. They also challenged those that failed to support community, such as the Asian cinema owners who charged exorbitant prices.

SYM inspired and helped to establish similar Asian youth movements not just elsewhere in London but also in places such as Manchester, Bradford and Sheffield.

It would be nice to think that this film is simply an interesting piece of nostalgia. Sadly we live in a world in which Islamophobia is rampant, racism continues to infect institutions such as the police and fascists seek to foment violence and sow division. In such circumstances, there is still much to learn from the courage and combativeness of the young rebels of the Southall Youth Movement.

The film is available on Vimeo and can be watched at www.vimeo.com/m/95551885.

Brian Richardson

'Our past illuminates the present'

Wonderland
By Beth Steel
Directed by Edward Hall

The events of the miners' strike for jobs of 1984-5 continue to lurk in the psyche and break surface from time to time, an indication that the destruction of an industry and with it hundreds of thousands of skilled well-paid jobs, cannot be forgotten.

Wonderland, a play that was at the Hampstead Theatre from June to July 2014, by Beth Steel takes the form of an objective overview of the whole strike from within a mine. The spectacular set at the Hampstead Theatre in North London had a miners' cage that moves up and down, a metal grille as the floor, a hydraulic ramp that takes the characters even deeper into the pit, walkways at the top of the set and bits of coal and dust everywhere.

The way it is lit, sometimes only with the concentrated beams from the top of the miners' helmets, completes the convincing atmosphere. It is almost as if the set itself is the main character in the play, dominating the human players and determining how they think and act.

As for the humans, they are in two groups. Those under the heading 'Above' in the cast list are the actual players of the period, the people with power, who keep their own names. They argue among themselves and scheme against the miners. Milton Friedman, the monetarist guru of the Tory party in the early 1980s is the first character on stage, the scene-setter.

He explains that the ideas lying around in the corridors of power and seized on at the time of crisis were his. Nicholas Ridley, the Tory politician, expounds his strategy for re-arming the party to break the stranglehold of the miners' union.

Peter Walker, the energy secretary at the time, comes across as a moderating figure who reins in Ian MacGregor, the chairman of the National Coal Board who has a simple, unsophisticated confrontational outlook. 'The Government has no business being in business,' he says.

It is the interplay between Walker, MacGregor and David Hart, the professional strike-breaker who operates from a room in Claridges – all three of them with different ideas of the best way to break the strike – that provide the dramatic content from within this group of characters. Only once do any of them, MacGregor, stray into the domain of the miners. He gets a frosty reception from them, and fails to communicate.

Pictures: Manuel Harlan

The other group of characters, listed under the heading 'Below' in the cast list are the miners themselves, who live in an opposite world. Two apprentices, a few seasoned pitmen, a deputy and the pit manager, actually mine the coal on stage, setting the explosive charges, loading the coal, pushing the trolleys, setting the pit props and so on.

They are a close, proud group, looking out for each other, working as a team and dealing with emergencies of which there are several including two roof falls. They are full of the comic banter that miners are famous for, about women, work and higher things besides.

The strike, when it comes, splits them into those for and against. Opinions and ideas about the ballot, about their wives, about how to survive are tossed around, but the strike itself forces the issues. A mass picket is staged with placards, arrests and a beating by the police. There is a moving cameo of the striking miners threatened with arrest for trespass while riddling for a few pieces of coal on an abandoned old tip. And there is a telling scene of David Hart tempting the scab Spud into his conspiracy to sue the NUM and to set up an alternative union for the scabs.

What is remarkable about the play is that it tells the audience how it was, without exaggeration, however unbelievable it might seem today. Hart really did organise the strike-breakers. Educated at Eton, he had the ear of Margaret Thatcher, the Prime Minister, as well as MacGregor and evidently MI5. A Nottinghamshire miner did become his chauffeur. In the play Spud becomes his butler. When Hart says to MacGregor in the play: 'Really I must leave you, my helicopter is waiting,' it is funny, but not absurd in the context.

The other characters with power are also drawn true to what is known about their actions and thoughts during the strike. Much is left out, including Arthur Scargill and Thatcher, but the bare bones of the miners' story remains. In an interview with the writer Beth Steel in the programme notes, she says about the writing: 'There's an acute desire to get it right – to include as much as possible – and that can get in the way. But I think plays and poems are cousins, not because of poetic dialogue, but rather because of a good poem's irreverent use of reality, its disregard for all the details with which a novelist builds their reality.'

It does become a wonderland that these fantastic events were allowed by the rest of society to be played out without much intervention from anywhere and that the way of life of the mining communities was destroyed as a result of it. No more will youngsters in the former mining areas be able to say: 'I am the son of a son of a son of a miners's son' – one of the refrains of the play.

The danger of writing a play like this, with a 360 degree viewpoint, is that it can become more of a history lesson than a play. Most of the literature of the strike either sets a human drama against the backdrop of the strike, as in the films *Billy Elliott* and *Brassed Off*, or it gets into the skull of a single individual, a miner or one of the women of the strike, or even a policeman, and relates their story.

The drama acted out within each set of characters in *Wonderland* and the very fact that they live in two opposite worlds that hardly come into contact with each other, even though they are interdependent, gives it a tension and a life that carries it through.

Beth Steel is a miner's daughter who did not go to university. She was drawn to the theatre in her early twenties and has now written two plays, both of them staged. Her original intention was to write a play set in a mine that would not be about the strike. 'I had no interest in writing a memorial to a very old-fashioned strike,' she says in an interview in the programme.

'Then something happened in my head. We read about the past with the lens and light of the present, but sometimes our past shines back and illuminates our present. So I wrote this play as a way of thinking about austerity, about the true cost of it, and who pays and who doesn't.'

Peter Arkell
Peter was a photographer during the miner's strike and is co-author of *Unfinished Business: the miners' strike for jobs 1984-5*. *Wonderland* was at the Hampstead Theatre in London during June and July 2014. It was directed by the theatre's artistic director Edward Hall. This is an edited version of a review which was first published on aworldtowin.net.

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